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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Mohamed Shahabuddeen, Presiding
Judge Florence Mumba
Judge Fausto Pocar
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama Dieng

Decision of: 2 July 2004

ICTR-97-21-AR73
5th July 2004
(191/A – 187/A)

Arsène Shalom NTAHOBALI

Pauline NYIRAMASUHUKO

v.

THE PROSECUTOR

Case No ICTR-97-21-AR73

2004 JUL 5

DECISION ON THE APPEALS BY PAULINE NYIRAMASUHUKO AND ARSÈNE SHALOM NTAHOBALI ON THE "DECISION ON DEFENCE URGENT MOTION TO DECLARE PARTS OF THE EVIDENCE OF WITNESSES RV AND QBZ INADMISSIBLE"

Counsel for the Prosecution

Ms. Silvana Arbia
Mr. Jonathan Moses
Ms. Adesola Adeboyejo
Mr. Manuel Bouwknecht

Counsel for the Defence

Mr. Duncan Mwanyumba
Nr. Normand Marquis
Ms. Nicole Bergevin
Mr. Guy Poupart

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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "International Tribunal", respectively), is seized of appeals by Arsène Shalom Ntahobali[1] and Pauline Nyiramasuhuko[2] ("Ntahobali Appeal" and "Nyiramasuhuko Appeal" respectively) ("Appeals" and "Appellants", collectively) against the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible," of 16 February 2004[3] ("Impugned Decision"). These appeals were certified by Trial Chamber II in its "Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification" dated 18 March 2004 ("Certification Decision").

2. The Appeals Chamber is also seized of two requests filed by Nyiramasuhuko[4] for short extensions of time within which to file the Nyiramasuhuko Appeal on the basis of illness of Lead Counsel from 20 February 2004, who was unable to work on the present appeal until Saturday, 27 March 2004. Co-Counsel, as a consequence, had to assume all trial commitments in lieu of Lead Counsel.

3. In its response, the Prosecution submitted that the Nyiramasuhuko Appeal was time barred as no extension of time had been granted at the time of filing of the Appeal.[5]

4. Rule 116(A) of the Rules of Procedure and Evidence ("Rules") permits the Appeals Chamber to grant a motion to extend a time limit "upon a showing of good cause". In the present circumstances, the Appeals Chamber considers that the month-long illness of Lead Counsel, coupled with the Co-Counsel's added responsibilities, constitute good cause within the meaning of Rule 116(A) of the Rules. The Appeals Chamber therefore recognises the Nyiramasuhuko Appeal to have been validly filed.

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[1] "Appel de Arsène Shalom Ntahobali sur la "Decision on Defence Urgent Motion to declare Parts of the Evidence of Witness RV and QBZ Inadmissible" Rendue le 16 février 2004", dated 25 March 2004.
[2] "Appel de Pauline Nyiramasuhuko de la 'Decision on Defence Urgent Motion to declare Parts of the Evidence of Witness RV and QBZ Inadmissible'", dated 29 March 2004.
[3] "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible," rendered by Trial Chamber II on 16 February 2004.
[4] "Requête en extension de délai pour l'appel de Pauline Nyiramasuhuko sur la "Decision on Defence Urgent Motion to declare Parts of the Evidence of Witness RV and QBZ Inadmissible"", dated 26 March 2004; "Requête en extension de délais aux fins de présenter l'appel à l'encontre de la "Decision on Defence Urgent Motion to declare Parts of the Evidence of Witness RV and QBZ Inadmissible"", dated 29 March 2004.
[5] "Prosecutor's Response to Nyiramasuhuko and Ntahobali's Appeal against the Decision on the Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", dated 01 April 2004.

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5. The Appeals Chamber hereby decides these interlocutory appeals on the basis of the written submissions of the parties.

Discussion

6. By motion addressed to Trial Chamber II, Appellant Nyiramasuhuko had requested the Trial Chamber to declare inadmissible the evidence of Prosecution witnesses RV and QBZ and to order the Prosecution not to examine the witnesses on certain allegations which the Appellant deemed not to be specifically pleaded in the Indictment.[6] The Trial Chamber dismissed this motion in the Impugned Decision, and, thereafter, both witnesses testified. On the same day as witness QBZ commenced his testimony, the Appellants sought certification to appeal against the Impugned Decision.

7. In the Certification Decision, the Trial Chamber found that the Appellants had failed to satisfy the requirements for certification provided in Rule 73(B) of the Rules. However, the Trial Chamber was of the view that the question of the admissibility of the testimony of Prosecution witnesses could significantly affect the outcome of the trial against the Appellants, to the extent that the relevant testimonies would be taken into consideration in final deliberations.

8. The principal argument of the Appellants is that the Prosecution should not be permitted to present evidence on allegations which are not clearly pleaded in the indictment. Appellant Nyiramasuhuko submits that the statements and testimony of Prosecution witnesses RV, QBZ and FAS should be declared inadmissible. Ntahobali's Appeal is concerned only with the evidence of witness QBZ.

9. It is well established that, for an indictment to be pleaded with sufficient particularity, it must set out the material facts of the Prosecution case with enough detail to inform the defendant clearly of the charges against him so that he may prepare his defence. The required degree of specificity depends very much on the facts of the case and the nature of the alleged criminal conduct. Although an indictment may be deemed potentially defective where it fails to plead with sufficient detail the essential aspects of the Prosecution case, the potential defect can be cured in certain circumstances, for instance, if the Prosecution provides the accused with timely, clear and consistent information detailing the factual basis underpinning the charges against him or her, or if the indictment is duly amended.[7]

[6] During the oral hearing of 16 February 2004 on Appellant Nyiramasuhuko's "Defence Urgent Motion to declare parts of the evidence of witnesses RV and QBZ Indamissible", co-defendants Arsène Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo and Joseph Kanyabashi joined in the motion which was filed in French on 12 February 2004.
[7] See generally *Prosecutor v. Kupreškić*, No. IT-95-16-A, Appeal Judgment, 23 October 2001, paras 88-123.

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10. In their appeals, the Appellants submit that the Trial Chamber erred by admitting the evidence of witnesses RV and QBZ, both of whom have testified before the Trial Chamber. The Appellants have conceded that witness QBZ did not testify to the allegations they sought to have declared inadmissible.[8] Ntahobali's Appeal, which is only concerned with witness QBZ, is therefore rendered moot. Similarly, the Appeals Chamber notes that Appellant Nyiramasuhuko's motion on the admissibility of the evidence of witness FAS was dismissed by decision of the Trial Chamber on 16 April 2004. As certification of this decision has not been granted, there is no right of appeal therefrom, and the question of admissibility of witness FAS's evidence is therefore not before the Appeals Chamber.[9]

11. In relation to witness RV, who has already testified in the trial, Appellant Nyiramasuhuko argues that the allegation of the witness that she was present at the installation of Elie Ndayambaje (co-accused in the case) as mayor in Muganza commune on 21 June 1994, was not specifically pleaded in the indictment and did not appear in any of the supporting materials. Appellant Nyiramasuhuko contends that this evidence is therefore not admissible.

12. The Appeals Chamber has reviewed the Indictment and the testimony of witness RV, and is of the view that the allegation of Appellant Nyramasuhuko's presence at the installation of Elie Ndayambaje as mayor in Muganza commune on 21 June 1994 should have been pleaded as a material fact in the indictment.

13. According to the evidence of witness RV, during the course of this gathering, Ndayambaje is alleged to have encouraged the population to kill Tutsis who were still in hiding.[10] A similar event, namely, the swearing in ceremony of Sylvain Nsabimana as prefect (also a co-accused in this case) on 19 April 1994, at which Nyiramasuhuko is said to have been present, and during which the President of the Interim Government is said to have made an inflammatory speech, is explicitly mentioned in paragraphs 6.21 and 6.22 of the indictment. This event underpins count 1 (conspiracy to commit genocide), count 2 (genocide), count 3 (complicity in genocide), counts 5, 6, 8 and 9 (crimes against humanity) and count 10 (serious violation of article 3 common to the Geneva Conventions and Additional Protocol II) of the Indictment. Therefore, in the view of the Appeals Chamber, as Nyiramasuhuko has not been charged in the Indictment for her presence at the installation of Ndayambaje on 21 June 1994, there can be no conviction in respect of her attendance at this meeting.

[8] Ntahobali's Appeal, para. 9 and Nyiramahusuko's Appeal, para. 25.
[9] "Decision on Nyiramasuhuko's motion to declare the evidence of witness FAS inadmissible against her", rendered by Trial Chamber II on 16 April 2004.
[10] T. 17 February 2004, pp. 6-7.

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14. However, whilst it may be the case that the allegation of witness RV in relation to Nyiramasuhuko's presence at the installation of Ndayambaje in Muganza commune is not specifically pleaded in the indictment, this alone does not render the evidence inadmissible.

15. Indeed, pursuant to Rule 89(C) of the Rules, the Trial Chamber may admit any relevant evidence which it deems to have probative value. It should be recalled that admissibility of evidence should not be confused with the assessment of the weight to be accorded to that evidence, an issue to be decided by the Trial Chamber after hearing the totality of the evidence. Consequently, although on the basis of the present indictment it is not possible to convict Nyiramasuhuko in respect of her presence at the installation of Ndayambaje, evidence of this meeting can be admitted to the extent that it may be relevant to the proof of any allegation pleaded in the Indictment.

16. The Appeals Chamber considers therefore that the Trial Chamber acted within its discretion in dismissing the Appellants' request to declare the evidence of witness RV inadmissible.

Disposition

17. For the above reasons, the Appeals Chamber dismisses the Appeals.

Done in French and English, the English text being authoritative.

Done this 2nd day of July 2004,
At The Hague,
The Netherlands.

Judge Mohamed Shahabuddeen,
Presiding

[Seal of the International Tribunal]