



International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

ICTR-01-76-AR72.2

29 July 2004

(105/A - 102/A)

IN THE APPEALS CHAMBER

105/A  
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**Before:** Judge Theodor Meron, Presiding Judge  
Judge Florence Ndepele Mwachande Mumba  
Judge Mehmet Güney  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Adama Dieng

**Decision of:** 29 July 2004

**Aloys SIMBA**  
(Appellant)

v.

**THE PROSECUTOR**  
(Respondent)

Case No. ICTR-01-76-AR72.2

2004 FEB 29 P 5:58  
*[Signature]*

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**DECISION ON INTERLOCUTORY APPEAL REGARDING TEMPORAL  
JURISDICTION**

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**Counsel for the Appellant**

Mr. Sadikou Ayo Alao  
Ms. Beth S. Lyons

**Counsel for the Respondent**

Mr. Hassan Bubacar Jallow  
Ms. Melanie Werrett  
Mr. James Stewart  
Mr. William Egbe  
Mr. Sulaiman Khan  
Mr. Ignacio Tredici  
Ms. Amina Ibrahim

**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 “Tribunal”, respectively);

**BEING SEIZED OF** the “Notice of Appeal of Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment Issued in English by Trial Chamber I, 6 May 2004, pursuant to Article 108 (RPE)”, filed by Aloys Simba (“Appellant”) on 14 May 2004 (“Appeal”);

**NOTING** the “Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment”, rendered by Trial Chamber I of the Tribunal on 6 May 2004 (“Impugned Decision”);

**NOTING** the “Decision on Validity of Appeal Pursuant to Rule 72(E) of the Rules of Procedure and Evidence”, issued by a Bench of the Appeals Chamber on 4 June 2004, allowing the Appeal to proceed as to the issue of temporal jurisdiction of the Tribunal;

**NOTING** the “Supplemental Defence Brief in Support of Appellant’s Third Ground (Tribunal’s Lack of Temporal Jurisdiction) in Notice of Appeal, Filed 14 May 2004”, filed on 17 June 2004;

**NOTING** the “Prosecutor’s Response to the Defence Brief in Support of Appellant’s Third Ground (Tribunal’s Lack of Temporal Jurisdiction) in Notice of Appeal Filed on 14 May 2004”, filed on 18 June 2004 (“Prosecutor’s Response”), in which the Prosecutor requests the dismissal of the Appeal;

**NOTING** that the Appellant did not reply to the Prosecutor’s Response;

**NOTING** the Appellant’s submission that in the Impugned Decision the Trial Chamber indicated that the Prosecution may use allegations outside the temporal jurisdiction of the Tribunal “to draw inferences as to intent or other elements of the crimes alleged to have been committed within the temporal jurisdiction” and that this, in the Appellant’s view, violates his right to be charged only for conduct within the Tribunal’s temporal jurisdiction;<sup>1</sup>

**NOTING** the Appellant’s request for an order to exclude from the indictment against him allegations based on events outside the temporal jurisdiction of the Tribunal;

**CONSIDERING** that Article 7 of the Statute of the Tribunal delimits the scope of the temporal jurisdiction of the Tribunal as the period between 1 January and 31 December 1994;

**CONSIDERING**, therefore, that no one may be indicted for a crime that was committed outside the prescribed jurisdictional scope;<sup>2</sup>

**CONSIDERING**, however, that Article 7 of the Statute of the Tribunal does not preclude inclusion in an indictment of information or allegations relating to events falling outside the temporal jurisdiction of the Tribunal, provided that all of the crimes charged against the accused in the indictment are alleged to have been committed within the temporal jurisdiction period;<sup>3</sup>

**NOTING** that in the present case, the indictment charges the Appellant with crimes alleged to have been committed within the temporal scope of the Tribunal's jurisdiction, while also mentioning events in which the Appellant allegedly took part which predate the temporal jurisdiction of the Tribunal;<sup>4</sup>

**CONSIDERING** that the Prosecution may seek to prove elements of the charged crimes by inference from acts falling outside the temporal scope of the Tribunal's jurisdiction;<sup>5</sup>

**FINDING** that the Trial Chamber's impugned statement that the references in the indictment to events which allegedly took place prior to 1994 "provide a context or background and may be a basis on which to draw inferences as to intent or other elements of the crimes alleged to have been committed within the temporal jurisdiction" correctly reflects the law of the Tribunal;

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<sup>1</sup> Appeal, para. 13.

<sup>2</sup> *Ngeze and Nahimana v. Prosecutor*, Case No. ICTR-96-11-AR72, Decision on the Interlocutory Appeals, 5 September 2000, p. 6 ("*Ngeze and Nahimana*").

<sup>3</sup> See Decision on the Interlocutory Appeals, p. 6.

<sup>4</sup> See Amended Indictment Pursuant to 6 May 2004 Decision.

<sup>5</sup> Judge Shahabuddeen explained this point in his Separate Opinion in *Ngeze and Nahimana*, pp. 4-5 (internal citation omitted):

The prosecution has to prove that all the legal elements of a crime were present at the time of commission of the crime, that is to say, at the time within the mandate year when the crime is alleged to have been committed. However, there is no reason why the evidence of their existence at that point of time cannot (in some cases, at any rate) include evidence deriving from a time prior to the commission of the crimes charged and, in particular, prior to the commencement of the mandate year. Prior matters can ground a finding of the present existence of a fact, in the sense that from one fact a reasonable inference may sometimes be made that another fact also existed.

...

If, for example, a man was charged with a crime committed on a certain date, it would be necessary ... for the prosecution to prove, as an element of the crime, that on that date he had the intent to commit the crime. But the evidence that on that date he had that intent could well derive from an earlier time. It may be that on a previous occasion he did acts or used words showing that he entertained feelings of enmity for the victim or that he even intended to commit the particular crime. A reasonable inference could, in some cases, be drawn that the intent so shown was present at the time of commission of the crime. In the result, the prosecution could prove that, at the actual time of the crime, the accused had the necessary intent, though the proof derived from an earlier time.

...

This reasoning has to be applied to the temporal framework of the Statute: the evidence of a required element could come from a time anterior to the mandate year, but what that evidence would prove was that, at the point of time within the mandate year when the crime was allegedly committed, the required element was present.

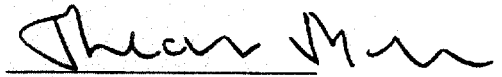
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**NOTING** that it will be for the Trial Chamber during the trial to decide whether to admit evidence relating to events falling outside the temporal jurisdiction of the Tribunal in accordance with Rule 89(C) of the Rules of Procedure and Evidence of the Tribunal;

**FOR THE FOREGOING REASONS,**

**HEREBY DISMISSES** the Appeal in its entirety.

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



Theodor Meron  
Presiding Judge

Dated this 29<sup>th</sup> day of July 2004,  
at The Hague,  
The Netherlands.

