

ICTR-98-42-AR73  
27 SEPTEMBER 2004  
(4071H - 4031H)

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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 Ndepele Mwachande Mumba  
Judge Fausto Pocar  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr Adama Dieng

**Decision of:** 27 September 2004

**Pauline NYIRAMASUHUKO**

v.

**THE PROSECUTOR**

*Case No ICTR-98-42-AR73*

ICTR Appeals Chamber

Date: 27 September 04  
Action: PG

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Parties, Judicial Arch  
LOs, LSS  
*[Signature]*

**DECISION ON PAULINE NYIRAMASUHUKO'S  
REQUEST FOR RECONSIDERATION**

**Counsel for the Prosecution**

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

**Counsel for the Defence**

Ms Nicole Bergevin  
Mr Guy Poupard

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2004 SEP 28 A 9 42  
*[Signature]*

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 a motion filed by Pauline Nyiramasuhuko<sup>1</sup> ("Motion" and "Appellant") for reconsideration of the Appeals Chamber's "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" ("July Ruling").<sup>2</sup>

2. In her Motion, the Appellant requests the Appeals Chamber to reconsider its July Ruling and to rule on the admissibility of the evidence of prosecution witness FAS. In the alternative, the Appellant requests the Appeals Chamber to grant her an extension of time to appeal against the Trial Chamber II's "Decision on Nyiramasuhuko's Motion to declare the evidence of witness FAS inadmissible against her" of 16 April 2004 ("Impugned Decision").<sup>3</sup>

3. The Prosecution in its response does not oppose the Appellant's request for reconsideration of the July Ruling, but argues that the Appeals Chamber should dismiss the remainder of the relief sought by the Appellant.<sup>4</sup>

**Request for reconsideration**

4. The Appellant requests that the Appeals Chamber reconsider its July Ruling and that it rule on the admissibility of the evidence of prosecution witness FAS.

5. The Appellant submits that her arguments concerning the Trial Chamber's decision to admit the evidence of witness FAS were raised in her certified appeal against the Trial Chamber's "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ

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<sup>1</sup> Requête de Pauline Nyiramasuhuko aux fins de reconsidération de la décision de la chambre d'appel "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' relativement au témoin FAS ou en extension de délai pour fins d'appel de la décision 'Décision on Nyiramasuhuko's motion to declare the evidence of witness FAS inadmissible against her'", filed on 8 July 2004.

<sup>2</sup> 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, dated 2 July 2004.

<sup>3</sup> See paragraphs 37 and 38 of the Motion.

<sup>4</sup> Prosecutor's Response to Nyiramasuhuko's motion dated 8 July 2004 for the reconsideration by the Appeals Chamber of its 2 July 2004 Decision re FAS, filed confidentially on 15 July 2004.

Inadmissible,” dated 16 February 2004,<sup>5</sup> and that they were already before the Appeals Chamber prior to the July Ruling. In the said certified appeal, the Appellant suggested that the Appeals Chamber had the power to also consider her arguments on the admissibility of witness FAS. The Appellant bases this argument on the reservation that in certifying the appeals for witnesses RV and QBZ the Trial Chamber had ruled that “as the Defence for Nyiramasuhuko indicated that the same issue of admissibility may recur with regard to several oncoming Prosecution Witnesses, an immediate resolution by the Appeals Chamber may materially advance the proceedings in the current case.”<sup>6</sup>

6. The Appeals Chamber disagrees.

7. Pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”), Trial Chamber decisions are without interlocutory appeals except where certification is granted by the Trial Chamber. If certification is granted, in conformity with Rule 73 (C), a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify. There is no general right of appeal against Trial Chamber decisions during trial. The right of appeal is limited to appeals which have been certified by the Trial Chamber on a particular issue,<sup>7</sup> and the Appeals Chamber will limit its ruling to matters which have been properly raised through certification.

8. Here, the Trial Chamber certified appeals on the admissibility of the evidence of witnesses QBZ and RV only. Although similar questions of admissibility arose subsequently in relation to witness FAS, these were challenged by the Appellant in a separate request for certification to appeal, which was granted in its own right by the Trial Chamber on 6 May 2004.<sup>8</sup> Thus, the Trial Chamber certified two separate appeals, the first as relates to the evidence of witnesses RV and QBZ, on 18 March 2004 and the other, concerning the evidence of witness FAS, on 6 May 2004.<sup>9</sup> In conformity with Rule 73(C), it was therefore incumbent on the Appellant to file two appeals, each appeal to be filed with the Appeals Chamber seven days after certification by the Trial Chamber.

<sup>5</sup> “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 and “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. These appeals were certified by Trial Chamber II in its “Decision on Ntahobali’s and Nyiramasuhuko’s Motions for Certification” dated 18 March 2004.

<sup>6</sup> Decision on Ntahobali’s and Nyiramasuhuko’s Motions for Certification, dated 18 March 2004, at para. 26.

<sup>7</sup> A Trial Chamber can grant certification to party to appeal against its decision if it considers that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

<sup>8</sup> Indeed, the record shows that the Trial Chamber decided the Appellants motion to declare the evidence of witness FAS inadmissible on 16 April 2004. The Appellant then sought certification to appeal against this decision on 23 April 2004, and certification was granted on 6 May 2004.

<sup>9</sup> Decision on Nyiramasuhuko’s motion for certification to appeal the “Decision on Nyiramasuhuko’s Motion to declare the evidence of witness FAS inadmissible against her”, dated 6 May 2004.

9. The Appellant had correctly followed the procedures in filing her appeal submissions concerning the evidence of witnesses RV and QBZ. However the same cannot be said of her appeal on witness FAS's evidence. As the Trial Chamber had granted the Appellant's request for certification to appeal against its decision on the admissibility of the evidence of witness FAS, it was for the Appellant to file an appeal, or at the very least, to inform the Appeals Chamber of the certification and to indicate that she was relying on her earlier submissions in the appeals on the evidence of witnesses RV and QBZ. The Appellant chose not to take such steps, and erroneously assumed that the Appeals Chamber would nevertheless consider, as part of the appeals on witnesses RV and QBZ, her arguments regarding witness FAS. The Appeals Chamber was not seized of this latter issue and there is therefore no basis for the Appeals Chamber to reconsider its July Ruling.

10. The Appeals Chamber deems it nevertheless appropriate to recall that the certification of an appeal has to be the absolute exception when deciding on the admissibility of the evidence, and that it is first and foremost the responsibility of the Trial Chambers, as triers of fact, to determine which evidence to admit during the course of the trial. As regards witnesses RV and QBZ, the intention of the Appeals Chamber in its July Ruling was to provide guidance to the Trial Chamber in similar questions of admissibility, and did not constitute an invitation to have the Appeals Chamber decide on the admissibility of each and every piece of evidence during trial.

11. Moreover, in its July Ruling, the Appeals Chamber underscored 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 or her so that he or she may prepare his or her defence. The required degree of specificity depends very much on the facts of the case and the nature of the alleged criminal conduct. If an indictment does not plead the material facts with sufficient detail, this can be remedied in certain circumstances at trial, for instance, by amendment of the indictment. Where a defect remains, the question then arises whether the trial of the accused was rendered unfair.<sup>10</sup>

12. The Appeals Chamber continued by stating that the failure to specifically plead certain allegations in the Indictment does not necessarily render the evidence inadmissible. The Trial Chamber has the discretion under Rule 89(C) to admit any evidence which it deems to have probative value, to the extent that it may be relevant to the proof of other allegations specifically pleaded in the Indictment.

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<sup>10</sup> See *Prosecutor v. Kupreškić*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001, paras 88-123, *Niyitegeka v. Prosecutor*, Case No. ICTR-96-14-A, Appeal Judgement, 9 July 2004, paras. 193-200.

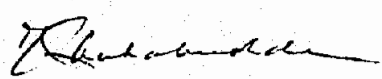
**Extension of time**

13. As an alternative request the Appellant seeks an extension of time to appeal against the Impugned Decision. Rule 116(A) of the Rules permits the Appeals Chamber to grant a motion to extend a time limit "upon a showing of good cause". The Appeals Chamber does not consider the reasons advanced by the Appellant, namely that certification was granted before the July Ruling and that she presented arguments on the admissibility of the evidence of witness FAS in her submissions for the appeal concerning witnesses RV and QBZ, to constitute good cause within the meaning of Rule 116(A) of the Rules.

**Disposition**

14. For the foregoing reasons, the Appeals Chamber dismisses the Motion as it is not seized of an appeal on the admissibility of the evidence of witness FAS.

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



Judge Mohamed Shahabuddeen  
Presiding

Done this 27<sup>th</sup> day of September 2004,  
At The Hague,  
The Netherlands.

[Seal of the International Tribunal]

