

ICTR-01-76-AR72.3  
30 SEPTEMBER 2004  
(1341H - 1311H)

1341H



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

**BEFORE A BENCH OF THE APPEALS CHAMBER**

Before: Judge Theodor Meron, Presiding  
Judge Mehmet Güney  
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Decision of: 30 September 2004

ICTR Appeals Chamber  
Date: 30 September 04  
Action: PG  
Copied To: Concerned Judges,  
Parties, Judicial Archives,  
LOS, LSS  
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**THE PROSECUTOR**

v.

**Aloys SIMBA**

Case No. ICTR-01-76-AR72.3

**DECISION ON VALIDITY OF APPEAL PURSUANT TO RULE 72(E) OF  
THE RULES OF PROCEDURE AND EVIDENCE**

**Counsel for the Prosecution**

Mr Richard Karegyesa  
Mr William Egbe  
Mr Sulaiman Khan  
Mr Ignacio Tredici  
Ms Amina Ibrahim

**Counsel for the Defence**

Mr Sadikou Ayo Alao  
Ms Beth Lyons

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS  
NAME / NOM: ROSETTE MUZIES-MORRISON  
SIGNATURE: *[Signature]* DATE: 30/09/04

1. This Bench of three Judges of 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 and 31 December 1994 ("Appeals Chamber" and "International Tribunal", respectively) is seized of the "*Acte d'appel contre la décision de la première chambre en date du 14 juillet 2004 rejetant la requête de la Défense en exceptions préjudicielles pour incompétence et pour vice de forme substantiels contre l'Acte d'accusation modifié en date du 10 mai 2004*" filed by Aloys Simba on 9 August 2004 ("Appeal" and "Appellant" respectively). In this appeal, the Appellant takes issue with Trial Chamber I's Decision of 14 July 2004 ("Impugned Decision"),<sup>1</sup> in which the Trial Chamber found that 1) the second amended Indictment adequately pleads the *mens rea* for joint criminal enterprise; and 2) the allegations contained in Count 4 (Murder as a Crime Against Humanity) of the Indictment are adequately connected to the widespread and systematic attack.

2. The Appeal, as corrected in the Reply filed by the Appellant on 7 September 2004,<sup>2</sup> purports to proceed as of right under Rule 72(B)(i) of the Rules of Procedure and Evidence of the International Tribunal ("Rules"), which provides that preliminary motions are without interlocutory appeal, except "in the case of motions challenging jurisdiction, where an appeal by either party lies as of right." The Appellant alleges that: 1) the Trial Chamber erred in concluding that the second amended Indictment adequately pled the *mens rea* for joint criminal enterprise; and 2) the Trial Chamber erred in considering that the allegations contained in Count 4 (Murder as a Crime Against Humanity) were adequately connected to the widespread and systematic attack. In his Response, the Prosecutor submits *inter alia* that the Appeal is inadmissible, since neither ground of appeal qualifies as a jurisdictional challenge within the definition of Rule 72(D).<sup>3</sup>

3. The Appellant submits in his Reply that his Appeal has to be understood as challenging the Trial Chamber's jurisdiction in relation to the counts contained in the second amended Indictment. The Appellant argues that the Appeal is an appeal against jurisdiction as a result of the formulation of the counts, and as the notion of the joint criminal enterprise is outside the parameters of Articles 2 and 3 of the Statute of the Tribunal. He adds that the Appeal seeks a finding that the Trial

<sup>1</sup> Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment, 14 July 2004.

<sup>2</sup> Réplique de la Défense à la réponse du Procureur en date du 16 août 2004 à l'acte d'appel du 4 août 2004 intitulé : "*Acte d'Appel contre la décision de la première chambre en date du 14 juillet 2004, rejetant la requête de la Défense en exceptions préjudicielles pour incompétence et pour vice de forme substantiels contre l'Acte d'accusation modifié en date du 10 mai 2004 - art.72B) i) (Corrigendum) et 108 du RPP*", filed on 7 September 2004 ("Reply").

<sup>3</sup> The Prosecutor's Response to the Defence Appeal Against the Trial Chamber Decision of 14 July 2004 Denying the Defence Motion Challenging Defects in the Form of Indictment, 16 August 2004 ("Response").

Chamber lacked jurisdiction to deal with murders as crimes against humanity, so long as the Prosecution had failed to establish coherently the link between the alleged murders and the widespread and systematic attacks which occurred in the country.

Validity of Appeal Under Rule 72(D)

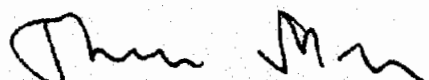
4. Pursuant to Rule 72(E), this Bench must determine whether the Appeal is “capable of satisfying the requirements of paragraph (D).” If the Appeal fails to satisfy the requirements of Rule 72(D) of the Rules, it must be dismissed.<sup>4</sup>

5. Neither of the Appellant’s grounds of appeal constitutes a jurisdictional challenge pursuant to Rule 72 (D). Although in his Reply, the Appellant has attempted to reformulate his arguments in jurisdictional terms, the Appeals Chamber considers that the substance of the Appeal remains nonetheless concerned with alleged defects in the form of the indictment. The Appellant’s propositions that “the notion of joint criminal enterprise [is] outside the parameters of art. 2 and 3 of the Statute,”<sup>5</sup> and that “the reference to joint criminal enterprise . . . relies on no legal basis”<sup>6</sup>, without more, do not suffice to transform the Appeal into a jurisdictional challenge as defined by Rule 72(D).

Disposition

6. For the foregoing reasons, the Appeal is dismissed.

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

  
 Theodor Meron  
 Presiding Judge

Done this 30<sup>th</sup> day of September 2004,  
 At The Hague,

<sup>4</sup> Rule 72(D) provides: “For purposes of paragraphs (A)(i) and (B)(i), a motion challenging jurisdiction refers exclusively to a motion which challenges an indictment on the ground that it does not relate to: (i) any of the persons indicated in Articles 1, 5, 6 and 8 of the Statute; (ii) the territories indicated in Articles 1, 7 and 8 of the Statute; (iii) the period indicated in Articles 1, 7, and 8 of the Statute; or (iv) any of the violations indicated in Articles 2, 3, 4 and 6 of the Statute.”

<sup>5</sup> Reply, p.3.

<sup>6</sup> Reply, p.5.

1311H

The Netherlands.



[Seal of the International Tribunal]

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