



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

53/H

DF

ICTR-00-55-AR73

14th October 2010

{53/H – 50/H}

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 14 October 2010

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: Kelly Kamete A. Agius
SIGNATURE: *[Signature]* DATE: 14 Oct. 2010

ICTR Appeals Chamber
Date: 14th October 2010
Action: *R. J. J. J.*
Copied To: *Concerned Judges,*

Ildephonse NIZEYIMANA

v.

THE PROSECUTOR

*Parties, Judicial
Archives, LOs LSS*

Case No. ICTR-00-55-AR73

[Signature]

**DECISION ON NIZEYIMANA'S INTERLOCUTORY APPEAL FROM THE
DECISION ON NIZEYIMANA'S MOTION TO ORDER THE PROSECUTOR
TO CONFORM WITH A TRIAL CHAMBER DECISION AND STRIKE
PARTS OF THE JUNE 18 AMENDED INDICTMENT**

Counsel for the Appellant

John Philpot
Cainnech Lussiaà-Berdou

Office of the Prosecutor

Hassan Bubacar Jallow
Drew White
Yasmine Chubin
Zahida Virani
Kirsten Gray

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 "Tribunal", respectively) is seized of an interlocutory appeal, filed by Ildephonse Nizeyimana ("Appellant") on 20 August 2010,¹ against the "Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment" issued on 12 July 2010 ("Impugned Decision") by Trial Chamber III of the Tribunal ("Trial Chamber").² The Prosecution responded on 2 September 2010³ and the Appellant replied on 6 September 2010.⁴ On 23 September 2010, the Prosecution filed supplementary submissions.⁵
2. The Appellant was initially charged in a joint indictment filed on 23 January 2000 and confirmed on 2 February 2000.⁶ The Prosecution re-filed this indictment on 17 November 2000.⁷
3. On 1 March 2010, the Prosecution filed an amended indictment.⁸ On 9 June 2010, the Trial Chamber ordered the Prosecution to amend the 1 March Indictment in certain respects.⁹ On 18 June 2010, the Prosecution filed an amended indictment pursuant to the 9 June Decision.¹⁰ On 23 June 2010, the Appellant filed a motion alleging that the Prosecution had not complied with the

¹ Interlocutory Appeal from the Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, 20 August 2010 ("Appeal").

² *The Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-00-55C-PT, Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, 12 July 2010.

³ Prosecutor's Response to "Interlocutory Appeal from the Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment" [sic], 2 September 2010 ("Response").

⁴ Reply to Prosecutor's Response to Interlocutory Appeal from the Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, 6 September 2010.

⁵ Prosecutor's Supplementary Submissions Regarding the "Interlocutory Appeal from the Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment" [sic], 23 September 2010.

⁶ *The Prosecutor v. Tharcisse Muvunyi, Idelphonse [sic] Nizeyimana, Idelphonse [sic] Hategekimana*, Case No. ICTR-2000-55-I, Indictment, 23 January 2000; *The Prosecutor v. Tharcisse Muvunyi, Idelphonse [sic] Nizeyimana, Idelphonse [sic] Hategekimana*, Case No. ICTR-2000-55-I, Decision to Confirm the Indictment, 2 February 2000.

⁷ *Prosecutor v. Tharcisse Muvunyi, Idelphonse [sic] Nizeyimana, Idelphonse [sic] Hategekimana*, Case No. ICTR-2000-55-I, Indictment, 17 November 2000.

⁸ *The Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-00-55C-PT, Amended Indictment, 1 March 2010 ("1 March Indictment").

⁹ *The Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-00-55C-PT, Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment, 9 June 2010 ("9 June Decision").

¹⁰ *The Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-00-55C-PT, Compliance with the Decision on Nizeyimana's Preliminary Motion on the Defects in the Amended Indictment, 18 June 2010 ("18 June Indictment").

9 June Decision and seeking an order to the Prosecution to conform to this decision and to strike parts of the 18 June Indictment.¹¹

4. On 12 July 2010, the Trial Chamber filed the Impugned Decision in which it granted in part the Defence Compliance Motion and ordered the Prosecution to file a further corrected indictment.¹² On 14 July 2010, the Prosecution filed a further amended indictment pursuant to the Impugned Decision.¹³ On 13 August 2010, the Trial Chamber certified the appeal against the Impugned Decision.¹⁴

5. On 29 September 2010, the Prosecution filed a new amended indictment.¹⁵

6. The Appellant submits two grounds for appeal, namely that the Trial Chamber erred, in the Impugned Decision, in: (1) determining the scope of applicability of the expression “where this information is known”, as used in the 9 June Decision;¹⁶ and (2) finding that the Prosecution had complied with the 9 June Decision, with certain exceptions, with respect to paragraphs 6, 7, 9, 11 to 17, and 22 to 29 of the 18 June Indictment, by providing sufficient information for the Appellant to conduct investigations.¹⁷ Additionally, in Annex 1 of the Appeal, the Appellant provides an analysis in support of his claim that each of the above-mentioned paragraphs of the 18 June Indictment is insufficiently pleaded.¹⁸

7. The Prosecution responds that all grounds of the Appeal are without merit and should be dismissed.¹⁹

8. The 18 June Indictment, which is the subject of this interlocutory appeal, has been replaced by the 29 September Indictment pursuant to the Decision on Motion to File an Amended Indictment. Therefore, the Defence’s challenges are to a previous indictment that is no longer operative. In these circumstances, the Appeals Chamber considers that the Appeal is moot and declines to entertain the Appellant’s challenges on the specificity and the validity of the charges in

¹¹ *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55-PT, Defence Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, 23 June 2010 (“Defence Compliance Motion”).

¹² Impugned Decision, Disposition, pp. 5, 6.

¹³ *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55C-PT, Amended Indictment, 14 July 2010.

¹⁴ *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55-T, Decision on Ildéphonse Nizeyimana’s Motion for Certification, 13 August 2010.

¹⁵ *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55C-PT, Second Amended Indictment, 29 September 2010 (“29 September Indictment”). See also *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-00-55C-T, Decision on Prosecutor’s Request for Leave to File an Amended Indictment, 22 September 2010 (“Decision on Motion to File an Amended Indictment”), Disposition.

¹⁶ Appeal, paras. 15, 17 citing Impugned Decision, paras. 3-4.

¹⁷ Appeal, paras. 15, 18.

¹⁸ Appeal, paras. 59-145.

¹⁹ Response, paras. 3, 4, 24, 37-63.

the 18 June Indictment. In the event that there are similar issues with the 29 September Indictment, it is always open to the Defence to seise the Trial Chamber of the matter.

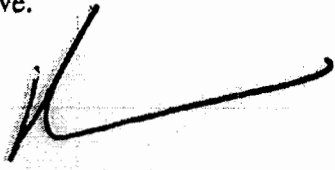
9. For the aforementioned reasons, the Appeals Chamber **DISMISSES** this Appeal.

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

Done this 14th day of October 2010,
at The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding