



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

ICTR-97-36A-A
03-08-2010
(20/A - 15/A)

20/A
AM

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson, *Pre-Appeal Judge*

Registrar: Mr. Adama Dieng

Date of filing: 3 August 2010

THE PROSECUTOR

v.

Yusuf Munyakazi

Case No. ICTR -97-36A-A

PROSECUTOR'S NOTICE OF APPEAL

Office of the Prosecutor

Hassan Bubacar Jallow
Deborah Wilkinson
Alphonse Van
Florida Kabasinga

Counsel for Yusuf Munyakazi

Bernabe Nekuie

THE PROSECUTOR hereby files a Notice of Appeal, pursuant to Article 24 of the Tribunal's Statute and Rule 108 of the *Rules of Procedure and Evidence*, against the Judgement of Trial Chamber III, rendered on 5 July 2010, in the case of *The Prosecutor v. Yusuf Munyakazi*, Case No. ICTR-97-36A-A.

IN THE GROUNDS OF APPEAL that follow, a reference to an error on a question of law means *a question of law invalidating the decision*, within the scope of Article 24(1) (a) of the Statute, unless otherwise specified. A reference to an error of fact means *an error of fact, which has occasioned a miscarriage of justice*, within the scope of Article 24(1) (b) of the Statute, unless otherwise specified.

FURTHER, each ground of appeal is numbered and described by a heading; it indicates the findings affected and the nature of the error committed by the Trial Chamber.

AND FURTHER, paragraph references are to paragraphs in the Judgement of the Trial Chamber.

THE PROSECUTOR GIVES NOTICE OF THE FOLLOWING GROUNDS OF APPEAL:

Ground I– The Trial Chamber erred in law and in fact by failing to Conclude that Yusuf Muiyankazi participated in the attack on the Nyamasheke Parish on 16 April 1994.

1. The Trial Chamber erred at para 301-316 of the Judgement in failing to find that Yusuf Munyakazi participated in the attack on Nyamasheke Parish on 16 April 1994.

2. In analyzing the evidence on the attack at Nyamasheke Parish, the Trial Chamber considered the testimonies of two Prosecution witnesses; BWP and LAY. Both were witnesses who had sought refuge at Nyamasheke Parish in April of 1994. They gave similar testimony with regard to the sequence of events, and the description of Munyakazi during the attack. The Trial Chamber concluded that both witnesses' accounts "were consistent with one another and there are no material discrepancies between their testimonies. It is the view of the Chamber that both witnesses were generally credible and reliable."¹

¹ J. para. 302.

3. The Trial Chamber further erred in fact by considering extraneous circumstances, such as the attack at CIMERWA where none of the witnesses places Munyakazi on 16 April 1994. The Chamber further erred by speculating that the Bugarama *Interahamwe* did not have two factions to attack both CIMERWA and Nyamasheke Parish on 16 April.²

4. The Trial Chamber erred in fact and in law by failing to consider all the evidence regarding the attack on Nyamasheke Parish on 16 April 1994. In this respect, the Trial Chamber ought to have taken judicial notice of the fact that there was an attack on Nyamasheke Parish on 16 April 1994 regardless of Munyakazi's participation. In this regard, the Trial Chamber had an adjudicated fact before it that was decided in its sister Chamber in the case against *Bagambiki, Ntagerura* and *Imanishimwe*.³ The Trial Chamber was aware of this from the cross-examination of Munyakazi where this finding in the aforementioned case was read into the record.⁴

5. On the basis of the finding on the credibility of Prosecution Witnesses and the information before it on the attack on Nyamasheke Parish on 16 April 1994, the only reasonable conclusion was that Yusuf Munyakazi participated in the attack on Nyamasheke Parish on 16 April 1994.

Relief sought

6. The Prosecutor requests the Appeals Chamber to reverse the Trial Chamber's findings and find that Yusuf Munyakazi participated in the attack on Nyamasheke Parish on 16 April 1994.

7. Upon so finding, Yusuf Munyakazi should be convicted for committing genocide and extermination as a principal perpetrator with regard to his participation in the attack on Nyamasheke Parish on 16 April 1994.

Ground II: The Trial Chamber erred in law and in fact by failing to conclude that Yusuf Munyakazi participated in a joint criminal enterprise with Tarek Aziz and Thomas Mugunda, and also with the Bugarama *Interahamwe* on the attacks at Nyamasheke Parisha on 16 April, Shangi Parish on 29 April 1994 and the Mibilizi

² J. para 312-316

³ Prosecutor v. *Ntagerura et al.* Case No. ICTR-99-46-T, 25 February 2004.

⁴ *Ntagerura et al.*, para. 585, T. 15 October 2009, p. 16.

Parish on 30 April 1994.

8. The Trial Chamber erred in law and in fact at paragraphs 24, 133,482, and 486 through 489 in failing to conclude that Yusuf Munyakazi participated in a joint criminal enterprise in concert with Tarek Aziz, Thomas Mugunda and the Bugarama *Interahamwe* whose object and purpose was to exterminate Tutsi in relation to his participation on the attacks at the Nyamasheke Parish on 16 April, Shangi Parish on 29 April 1994 and the Mibilizi Parish on 30 April 1994.

9. From the facts the Trial Chamber found to have been proven, at paragraphs 363-380 and 412-423 of the Judgement, the only reasonable inference that could be drawn was that Munyakazi participated in a joint criminal enterprise in concert with Tarek Aziz, Thomas Mugunda and the Bugarama *Interahamwe*. The common purpose of the joint criminal enterprise was to kill Tutsi at the Nyamasheke Parish on 16 April, Shangi Parish on 29 April 1994 and at the Mibilizi Parish on 30 April 1994.

10. The Trial Chamber erred in law by requiring the Prosecutor to prove a prior relationship between Munyakazi and Tarek Aziz and Mugunda in order to support the allegation at paragraphs 4 and 5 of the Indictment.⁵

11. The Trial Chamber further erred in law in concluding that the allegation that Munyakazi participated in a joint criminal enterprise with the 'Bugarama *Interahamwe*' was "too vague" to support a conviction.⁶

12. The Trial Chamber failed to consider and apply the correct jurisprudence of the Appeals Chamber which specifies that when pleading participation in a joint criminal enterprise, the Prosecution is required to specify a plurality of persons. The persons identified need not be organised in a military, political or administrative structure.⁷

13. The Appeals Chamber has further held that naming participants who physically perpetrated the crimes by broad category, such as *Interahamwe* and gendarmes and further identifying them with geographic and temporal details is sufficient in the context

⁵ J. paras. 484 & 487.

⁶ J. para 489

⁷ *Krnojelac*(AC) para3 1

of a case and given the nature of attacks because the Prosecution can not provide more specific identification.⁸

14. Additionally, in light of the Appeals Chamber's jurisprudence in *Gacumbitsi* and *Kvočka et al*, the allegation in the Indictment concerning Munyakazi's participation in a joint criminal enterprise with the Bugarama *Interahamwe* fulfilled all the requirements of adequate notice.⁹

15. Paragraph 4 of the Indictment states that Munyakazi was involved in a joint criminal enterprise with ten named individuals, among them Tarek Aziz and Thomas Mugunda, along with Bugarama *Interahamwe* and others. The object and purpose of the joint criminal enterprise was to commit genocide and crimes against humanity targeting the Tutsi racial or ethnical group. The Indictment specifies that Munyakazi acted with members of the enterprise with the intent to destroy the Tutsi population in whole or in part.

16. Appeals Chamber jurisprudence requires that in order for an accused to be put on adequate notice of the nature and cause of the charges against him, the Indictment has to be considered as a whole.¹⁰ Thus the material facts underpinning Munyakazi's actions with members of the Bugarama *Interahamwe* were clearly spelt out in the 'Factual Allegations' part of the Prosecutor's Indictment.¹¹

17. The failure of the Trial Chamber to appreciate and to provide a full and correct characterization of Munyakazi's culpability led to errors of law and fact that require the intervention of the Appeals Chamber.

Relief sought

18. The Prosecutor requests the Appeals Chamber to apply the law to the factual findings of the Trial Chamber, taken as a whole, and find that in addition to committing genocide and extermination, Munyakazi bears full responsibility as a co-perpetrator of a joint criminal enterprise in the attacks at the Nyamasheke Parish on 16 April, Shangi Parish on 29 April 1994 and the Mibilizi Parish on 30 April 1994.

⁸ *Simba* (AC) Case No. ICTR-01-76-A, 27 November 2007, para. 71

⁹ *Sylvestre Gacumbitsi v The Prosecutor*, Case No. ICTR-01-64-A7 July 2006, para. 162, quoting *Kvočka*, AC, paras. 28 & 42.

¹⁰ *Gacumbitsi*, AC, para. 123

¹¹ Indictment, paras. 8-15

19. In order to reflect Munyakazi's full criminal liability, the Appeals Chamber should consequently impose the appropriate sentence of imprisonment for the remainder of his life.

Ground III: The Trial Chamber erred in the sentence it imposed on Yusuf Munyakazi.

20. This ground of appeal affects the sentence imposed on Yusuf Munyakazi by the Trial Chamber following his conviction for genocide and extermination as a crime against humanity based on his acts at Shangi and Mibilizi Parishes, for which he received a 25 year sentence. The ground relates to paragraphs 509-

21. The Trial Chamber erred in law when it did not assign the correct weight to the gravity of the offence in this case by sentencing Munyakazi to 25 years' imprisonment for the massacres at Shangi and Mibilizi Parishes, in which more than 5,000 Tutsi victims perished.¹² The Trial Chamber should have assigned the more appropriate sentence of imprisonment for the remainder of his life to Yusuf Munyakazi.

22. The Chamber failed to consider or gave limited weight to, among others, Munyakazi's pre-eminent role in the crimes, the massiveness of the crimes which he perpetrated and the absence of mitigating factors. The sentence imposed against Munyakazi falls outside the sentence range established by the Tribunal's jurisprudence. The appropriate sentence should be remainder of life.

WORD COUNT: 1,566

DATED: 03.08.2010



Hassan Bubacar Jallow

Prosecutor

¹² J. paras. 514-517.

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