

SUMMARY OF THE KALIMANZIRA JUDGEMENT

I. INTRODUCTION

A. Introductory Remarks

1. As the Registrar announced, the case on our Agenda today is *Callixte Kalimanzira v. The Prosecutor*. Mr. Kalimanzira and the Prosecutor appealed from the trial judgement rendered in this case on 22 June 2009 by Trial Chamber III. According to the scheduling order issued on 21 September 2010, the Appeals Chamber will presently deliver its judgement in this case. In summarizing today's judgement, I will proceed first with Mr. Kalimanzira's appeal. This oral summary does not constitute any part of the official and authoritative judgement of the Appeals Chamber which is rendered in writing and will be distributed to the parties at the close of the hearing. In addition, not every point addressed in the judgement will be mentioned in this summary, which focuses only on central issues.

B. Background

2. Briefly, the background of this case is as follows. Mr. Kalimanzira was born in 1953 in Muganza Commune, Butare Prefecture, Rwanda. Starting in 1986, Mr. Kalimanzira held various positions in the Rwandan government. He joined the Ministry of Interior in January 1992 and served as *directeur de cabinet*, the ministry's second most senior official, from September of that year through the relevant events of 1994.

3. The Trial Chamber convicted Mr. Kalimanzira for instigating and aiding and abetting genocide at the roadblock on Butare-Gisagara road around 22 April 1994, and for aiding and abetting genocide at Kabuye hill on 23 April 1994 and at the inauguration of Élie Ndayambaje as bourgmestre of Muganza Commune on 22 June 1994. In addition, it convicted Mr. Kalimanzira for committing direct and public incitement to commit genocide at the Jaguar roadblock in mid- to late April 1994, at the Kajyanama roadblock in late April 1994, at the Gisagara marketplace at the end

of May 1994, and at the Nyabisagara football field in late May or early June 1994. Mr. Kalimanzira was sentenced to a single term of 30 years of imprisonment.

II. APPEAL OF CALLIXTE KALIMANZIRA

A. First Ground of Appeal: Alleged Violations of Fair Trial Rights

4. I will now address Mr. Kalimanzira's appeal, starting with his First Ground of Appeal alleging that the Trial Chamber violated his right to a fair trial. More specifically, Mr. Kalimanzira submits that the Trial Chamber: erred in finding that the Prosecution did not violate its disclosure obligations under Rule 68 of the Rules of Procedure and Evidence ("Rules"); erred in not postponing the trial on the basis of his lead counsel's absence; and erred in not finding a violation to his right to fair trial due to the late disclosure of cross-examination materials. Mr. Kalimanzira further contends that he possessed inadequate time and resources to prepare for trial. The Appeals Chamber finds no error in the Trial Chamber's relevant determinations. Accordingly, the Appeals Chamber dismisses Mr. Kalimanzira's First Ground of Appeal.

B. Second Ground of Appeal: Alleged Errors in Assessing Authority and Influence

5. In his Second Ground of Appeal, Mr. Kalimanzira submits that the Trial Chamber erred in law and fact in assessing his authority and influence in Butare Prefecture. The Appeals Chamber finds no error in the Trial Chamber's relevant conclusions and analysis. Accordingly, the Appeals Chamber dismisses Mr. Kalimanzira's Second Ground of Appeal.

C. Fourth Ground of Appeal: Alleged Errors in Assessing Alibi

6. In his Fourth Ground of Appeal, Mr. Kalimanzira submits that the Trial Chamber erred in its consideration of both his alibi notice and the evidence supporting his alibi. The Appeals Chamber finds that the Trial Chamber acted within the scope of its discretion in its assessment of both alibi notice and evidence.

Accordingly, the Appeals Chamber dismisses Mr. Kalimanzira's Fourth Ground of Appeal.

D. Third and Sixth Grounds of Appeal: Alleged Errors Relating to Kabuye Hill

7. In his Third and Sixth Grounds of Appeal, Mr. Kalimanzira challenges his conviction for having aided and abetted genocide, in part, based on the killing of Tutsi civilians at Kabuye hill in Butare Prefecture on 23 April 1994. The Trial Chamber based this conviction principally on Mr. Kalimanzira's actions in connection with the luring of Tutsis to Kabuye hill at the Gisagara marketplace and along the Kabuye-Gisagara road as well as his presence at Kabuye hill where he brought reinforcements to participate in the attack. Mr. Kalimanzira submits that the Trial Chamber erred in finding that his actions met the legal thresholds for aiding and abetting genocide and in its assessment of the underlying evidence.

8. The Appeals Chamber finds that the Trial Chamber did not err in determining that Mr. Kalimanzira's actions met the legal thresholds for aiding and abetting genocide. The Trial Chamber also did not err in its findings relating to the Gisagara marketplace and relating to Mr. Kalimanzira's presence on Kabuye hill. By contrast, the Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber erred in law by accepting Witness BWK's hearsay identification of Mr. Kalimanzira at the Kabuye-Gisagara road without explanation. The Appeals Chamber recalls that caution is warranted before basing convictions on hearsay evidence. Given the nature of this hearsay identification evidence, the Appeals Chamber, Judge Pocar dissenting, considers the Trial Chamber's conclusions regarding Mr. Kalimanzira's actions at Kabuye-Gisagara road, which rely on Witness BWK's uncorroborated testimony, are unsafe.

9. However, the Appeals Chamber finds that the Trial Chamber's conclusions with respect to Mr. Kalimanzira's actions at the Gisagara marketplace and Kabuye hill are sufficient to support the conclusion that Mr. Kalimanzira intended to aid and abet the acts of genocide on Kabuye hill and substantially contributed to them.

Therefore the Trial Chamber's error with respect to the events at Kabuye-Gisagara road did not result in a miscarriage of justice. Accordingly, the Appeals Chamber dismisses Mr. Kalimanzira's Third and Sixth Grounds of Appeal.

E. Fifth Ground of Appeal: Alleged Errors Relating to the Inauguration of Élie Ndayambajye

10. In his Fifth Ground of Appeal, Mr. Kalimanzira challenges his conviction for having aided and abetted genocide, in part, based on his presence at the inauguration of Élie Ndayambaje as bourgmestre of Muganza Commune, Butare Prefecture, on or about 22 June 1994, during which Mr. Ndayambaje instigated the killing of Tutsis. Mr. Kalimanzira makes a number of arguments, including that there is insufficient evidence demonstrating that killings in fact followed the ceremony.

11. The Appeals Chamber, Judge Pocar dissenting, considers that it is unclear from the testimony of the Prosecution witnesses whether they had first-hand knowledge of any killings or whether their evidence was hearsay. The witnesses refer to no particular incident, provide no approximate time-frame for any killings, and do not give any identifying information concerning the assailants or victims. The Appeals Chamber considers, Judge Pocar dissenting, that no reasonable trier of fact could have concluded that Tutsis were killed as a result of the ceremony in circumstances where no evidence about even a single incident was presented. Accordingly, the Appeals Chamber, Judge Pocar dissenting, grants Mr. Kalimanzira's Fifth Ground of Appeal.

F. Seventh Ground of Appeal: Alleged Errors Relating to the Butare-Gisagara Roadblock

12. In his Seventh Ground of Appeal, Mr. Kalimanzira challenges his conviction for instigating and aiding and abetting genocide based, in part, on his participation in the killings at a roadblock on the Butare-Gisagara road on or around 22 April 1994. Mr. Kalimanzira makes a number of arguments, including that the Trial Chamber

erred in finding that the Indictment's vagueness with respect to events at the roadblock on Butare-Gisagara road was cured by the summary of Witness BXK's anticipated testimony annexed to the Prosecution Pre-Trial Brief, the witness's prior statement, and the Prosecution's opening statement.

13. The Appeals Chamber, Judge Pocar dissenting, finds that three factors undermine the Trial Chamber's finding that the defect in the Indictment with respect to events at the roadblock on Butare-Gisagara road was cured, especially when considered together: (1) the summary of Witness BXK's anticipated evidence inaccurately describes the location of the incident; (2) the French translation of the Prosecution Pre-Trial Brief was filed only on the first day of trial, and only four days before Witness BXK testified; and (3) the Prosecution indicated shortly before the translation was filed that the witness summaries annexed to the Pre-Trial Brief contained no new allegations. In addition, the Appeals Chamber, Judge Pocar dissenting, considers that Mr. Kalimanzira's submissions appeared confused about the Prosecution's case with respect to the roadblock on Butare-Gisagara road, and that in context this is a strong indication that he was prejudiced by the lack of clarity concerning the charges against him.

14. The Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber erred in law by finding that the defect in the Indictment was cured and thus in judging Mr. Kalimanzira guilty on the basis of his actions at the roadblock on the Butare-Gisagara road. Accordingly, the Appeals Chamber, Judge Pocar dissenting, grants Mr. Kalimanzira's Seventh Ground of Appeal.

G. Eighth and Ninth Grounds of Appeal: Alleged Errors Relating to the Jaguar and Kajyanama Roadblocks

15. In his Eighth and Ninth Grounds of Appeal, Mr. Kalimanzira appeals against his conviction for direct and public incitement to commit genocide based, in part, on his actions at the Jaguar roadblock, which was located near the Gisagara Catholic Church in Butare Prefecture, and at the Kajyanama roadblock in Remera Sector,

Muganza Commune. Mr. Kalimanzira makes a number of arguments, including that the Trial Chamber erred in law and in fact in finding that his conduct at these sites amounted to direct and public incitement to commit genocide.

16. The Appeals Chamber recalls that a person may be found guilty of direct and public incitement to commit genocide, pursuant to Article 2(3)(c) of the Statute, if he or she directly and publicly incited the commission of genocide and had the intent to directly and publicly incite others to commit genocide. The Appeals Chamber further recalls that in its Judgement in the *Nahimana et al.* case, it determined that supervising a specific group of individuals manning a roadblock does not constitute public incitement to commit genocide. The Appeals Chamber finds that the Trial Chamber erred in law by not applying this *Nahimana* precedent to Mr. Kalimanzira's actions at the Jaguar and Kajyanama roadblocks. Considering the events at the Jaguar and Kajyanama roadblocks *de novo* under the correct legal standard, the Appeals Chamber finds that the Prosecution did not prove that Mr. Kalimanzira intended to incite anyone other than those manning the roadblocks, and thus that the Prosecution did not prove that Mr. Kalimanzira possessed the *mens rea* for direct and public incitement to commit genocide.

17. Accordingly, the Appeals Chamber grants Mr. Kalimanzira's Eighth and Ninth Grounds of Appeal.

H. Tenth Ground of Appeal: Alleged Errors Relating to the Nyabisagara Football Field

18. In his Tenth Ground of Appeal, Mr. Kalimanzira appeals against his conviction for direct and public incitement to commit genocide based, in part, on a speech he gave at the Nyabisagara football field in Kibayi Commune, Butare Prefecture, in late May or early June 1994. Mr. Kalimanzira makes a number of arguments, including that the Trial Chamber erred in assessing evidence provided by the Prosecution and Defence witnesses.

19. The Appeals Chamber underscores that trial chambers enjoy a broad discretion in assessing evidence, to which deference is owed. However, in these specific circumstances, the Appeals Chamber, Judge Pocar dissenting, finds that the Trial Chamber's analysis of Defence evidence rested on a number of legal and factual errors, including misconstruing the testimonies of Defence Witnesses AKK, Innocent Mukuralinda, and KXL. The Appeals Chamber, Judge Pocar dissenting, finds that considered together, these errors render Mr. Kalimanzira's conviction for the events at Nyabisagara football field unsafe.

20. Accordingly, the Appeals Chamber, Judge Pocar dissenting, grants Mr. Kalimanzira's Tenth Ground of Appeal.

I. Eleventh Ground of Appeal: Alleged Errors Relating to the Gisagara Marketplace

21. In his Eleventh Ground of Appeal, Mr. Kalimanzira appeals against his conviction for direct and public incitement to commit genocide based, in part, on his actions during a meeting at the Gisagara marketplace at the end of May 1994. Mr. Kalimanzira makes a number of arguments, including that the Trial Chamber erred in failing to address the identification evidence of Witness BDK on whose testimony his conviction was based.

22. The Appeals Chamber observes that Witness BDK's basis for identifying Mr. Kalimanzira at the Gisagara marketplace relied on hearsay evidence. The Appeals Chamber recalls that caution is warranted before basing convictions on hearsay evidence. It is unclear from the Trial Judgement to what extent such caution was applied. The Appeals Chamber, Judge Pocar dissenting, finds that in the context of these facts, the Trial Chamber's failure to provide a clearer explanation of its reasons for accepting portions of Witness BDK's identification testimony constituted an error of law.

23. Assessing Witness BDK's evidence *de novo* under the correct legal standard, the Appeals Chamber, Judge Pocar dissenting, considers that Witness BDK's

identification of Mr. Kalimanzira has not been established beyond a reasonable doubt. The Appeals Chamber, Judge Pocar dissenting, thus holds that Mr. Kalimanzira's conviction with respect to the May meeting at the Gisagara marketplace is unsafe.

24. Accordingly, the Appeals Chamber, Judge Pocar dissenting, grants Mr. Kalimanzira's Eleventh Ground of Appeal.

III. APPEAL OF THE PROSECUTION

A. First Prosecution Ground of Appeal: Alleged Errors Relating to the Form of Criminal Responsibility

25. I will now turn to the Prosecution's two grounds of appeal. In its First Ground of Appeal, the Prosecution contends that the Trial Chamber erred by not concluding, based on the evidence it accepted, that with respect to events at Kabuye hill and the roadblock at Butare-Gisagara road, Mr. Kalimanzira ordered and committed the crime of genocide. The Appeals Chamber, Judge Pocar dissenting, has reversed Mr. Kalimanzira's conviction with respect to events taking place at the roadblock at Butare-Gisagara road, and thus need not address this aspect of the Prosecution's appeal. The Appeals Chamber also considers that the Trial Chamber acted within the scope of its discretion in concluding that aiding and abetting, rather than ordering or committing, most aptly describes Mr. Kalimanzira's actions at Kabuye hill. Accordingly, the Appeals Chamber dismisses the Prosecution's First Ground of Appeal.

B. Second Prosecution Ground of Appeal: Alleged Errors Relating to the Sentence

26. In its Second Ground of Appeal, the Prosecution contends that the Trial Chamber erred in imposing a sentence of 30 years' imprisonment and requests that the Appeals Chamber increase Mr. Kalimanzira's sentence to imprisonment for the remainder of his life. The Prosecution maintains that the Trial Chamber erred in its assessment of the gravity of Mr. Kalimanzira's crimes; gave undue weight to

irrelevant considerations; and erroneously reserved life imprisonment for a certain class of offenders. The Appeals Chamber finds no error in the Trial Chamber's assessment of these issues. Accordingly, the Appeals Chamber dismisses the Prosecution's Second Ground of Appeal.

IV. SENTENCE AND DISPOSITION

27. The Appeals Chamber, Judge Pocar dissenting, considers that the reversal of almost all Mr. Kalimanzira's convictions represents a significant reduction in his culpability, which calls for a revision of his sentence. The Appeals Chamber notes, however, that it has affirmed Mr. Kalimanzira's conviction for aiding and abetting the genocide of Tutsis at Kabuye hill. Thus he remains convicted of an extremely serious crime.

V. DISPOSITION

28. For the foregoing reasons, THE APPEALS CHAMBER,

PURSUANT to Article 24 of the Statute and Rule 118 of the Rules;

NOTING the written submissions of the parties and their oral arguments presented at the hearing on 14 June 2010;

SITTING in open session;

GRANTS, Judge Pocar dissenting, Kalimanzira's Fifth Ground of Appeal and REVERSES his conviction for aiding and abetting genocide in relation to his presence at the inauguration of Élie Ndayambaje;

GRANTS, Judge Pocar dissenting, Kalimanzira's Seventh Ground of Appeal and REVERSES his conviction for instigating and aiding and abetting genocide in relation to killings at the Butare-Gisagara roadblock;

GRANTS Kalimanzira's Eighth and Ninth Grounds of Appeal and REVERSES his conviction for direct and public incitement to commit genocide in relation to the events at the Jaguar and Kajyanama roadblocks;

GRANTS, Judge Pocar dissenting, Kalimanzira's Tenth and Eleventh Grounds of Appeal and REVERSES his conviction for direct and public incitement to commit genocide in relation to the events at the Nyabisagara football field and the Gisagara marketplace;

DISMISSES Kalimanzira's Appeal in all other respects;

DISMISSES the Prosecution's Appeal in all respects;

AFFIRMS Kalimanzira's conviction for aiding and abetting genocide in relation to the massacre at Kabuye hill;

REDUCES, Judge Pocar dissenting, the sentence of 30 years of imprisonment imposed on Kalimanzira by the Trial Chamber to 25 years of imprisonment to run as of this day, subject to credit being given under Rules 101(C) and 107 of the Rules for the period he has already spent in detention since his arrest on 8 November 2005;

RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules; and

ORDERS that, in accordance with Rule 103(C) and Rule 107 of the Rules, Kalimanzira is to remain in the custody of the Tribunal pending the finalization of arrangements for his transfer to the State where his sentence will be served.