



**Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

**Before:**

**Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Florence Ndepele Mwachande Mumba  
Judge Wolfgang Schomburg  
Judge Inés Mónica Weinberg de Roca**

**Registrar:**

**Mr. Adama Dieng**

**Judgement of:**

**23 May 2005**

**JUVÉNAL KAJELIJELI  
(Appellant)**

**v.**

**THE PROSECUTOR  
(Respondent)**

**Case No. ICTR-98-44A-A**

---

**JUDGEMENT**

---

**Counsel for the Appellant:**

Prof. Lennox S. Hinds  
Prof. Sherrie L. Russell-Brown  
Ms. Juliette Chinaud

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart

## CONTENTS

|  |           |
|--|-----------|
| <b>I. INTRODUCTION .....</b>   | <b>1</b>  |
| A. THE APPELLANT.....  | 1         |
| B. THE JUDGEMENT AND SENTENCE .....  | 1         |
| C. THE APPEAL.....   | 2         |
| D. STANDARDS FOR APPELLATE REVIEW .....  | 2         |
| <b>II. ALLEGED INCORRECT APPLICATION OF LAW TO THE FACTS OF THE CASE<br/>(GROUND OF APPEAL 4) .....</b>  | <b>4</b>  |
| A. IMPACT OF TRAUMA.....   | 4         |
| B. ALLEGED USE OF DIFFERENT STANDARDS IN THE ASSESSMENT OF EVIDENCE .....  | 5         |
| C. ALLEGED MISAPPLICATION OF RULE 90(G) OF THE RULES .....   | 7         |
| <b>III. ALLEGED ERROR IN REJECTING EVIDENCE OF DEFENCE'S TUTSI<br/>WITNESSES THAT THE APPELLANT SAVED THEIR LIVES (GROUND OF<br/>APPEAL 5) .....</b>   | <b>9</b>  |
| <b>IV. ALLEGED ERROR IN REJECTING THE APPELLANT'S ARGUMENT THAT<br/>PROSECUTION WITNESSES WHO WERE ARRESTED BY HIM HAD A MOTIVE<br/>TO TESTIFY FALSELY (GROUND OF APPEAL 6).....</b>   | <b>11</b> |
| <b>V. ALLEGED ERROR IN ASSIGNING THE BURDEN OF PROOF ON ALIBI AND<br/>ASSUMPTION OF FACTS NOT IN EVIDENCE WITH RESPECT TO THE ALIBI<br/>(GROUND OF APPEAL 7) .....</b>   | <b>13</b> |
| A. BURDEN OF PROOF .....   | 13        |
| B. ALLEGED ERRORS RELATING TO WITNESS JK312.....   | 15        |
| 1. Credibility .....   | 15        |
| 2. Factual Errors .....  | 18        |
| C. ALLEGED ERRORS RELATING TO WITNESS JK27.....  | 19        |
| <b>VI. ALLEGED ERROR IN FINDINGS WITH RESPECT TO THE DISTRIBUTION OF<br/>TUTSI PROPERTIES TO INTERAHAMWE (GROUND OF APPEAL 8) .....</b>  | <b>23</b> |
| <b>VII. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS ACTIVELY<br/>INVOLVED IN THE TRAINING OF INTERAHAMWE (GROUND OF APPEAL 9) ....</b>   | <b>25</b> |
| <b>VIII. ALLEGED ERRORS IN FINDING THAT THE APPELLANT EXERCISED<br/>LEADERSHIP AND EFFECTIVE CONTROL OVER THE INTERAHAMWE AND<br/>THAT HE HAD THE AUTHORITY TO STOP THE KILLINGS IN MUKINGO,<br/>NKULI, AND KIGOMBE COMMUNES (GROUNDS OF APPEAL 10 AND 21) .....</b> | <b>28</b> |
| A. THE PARTIES' SUBMISSIONS.....   | 28        |
| B. CONCURRENT CONVICTIONS UNDER ARTICLE 6(1) AND ARTICLE 6(3) OF THE STATUTE .....   | 29        |
| C. WHETHER THE APPELLANT HELD A SUPERIOR POSITION .....  | 30        |
| 1. The Trial Chamber's Test for Establishing a Superior-Subordinate Relationship .....   | 30        |
| 2. The Trial Chamber's Application of the Superior-Subordinate Relationship Test .....   | 32        |
| <b>IX. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT AT<br/>THE CANTEEN IN NKULI COMMUNE ON 6 APRIL 1994 (GROUND OF APPEAL<br/>11).....</b>  | <b>35</b> |

|  |           |
|--|-----------|
| <b>X. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT AT THE MUKINGO COMMUNE OFFICE ON THE MORNING OF 7 APRIL 1994 (GROUND OF APPEAL 12).....</b>      | <b>37</b> |
| <b>XI. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT AT BYANGABO MARKET ON THE MORNING OF 7 APRIL 1994 (GROUND OF APPEAL 13) .....</b>               | <b>40</b> |
| A. WITNESS GAO .....   | 40        |
| B. WITNESS GDQ .....   | 43        |
| C. WITNESS GBE.....  | 44        |
| D. WITNESS MEM .....   | 44        |
| E. WITNESS RGM.....  | 46        |
| F. WITNESS MLNA.....   | 47        |
| G. WITNESS TLA .....   | 47        |
| <b>XII. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT DURING THE KILLINGS AT RWANKERI ON THE MORNING OF 7 APRIL 1994 (GROUND OF APPEAL 14) .....</b> | <b>49</b> |
| <b>XIII. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT DURING THE KILLINGS AT MUNYEMVANO'S COMPOUND (GROUND OF APPEAL 15) .....</b>                  | <b>54</b> |
| <b>XIV. ALLEGED ERROR IN MAKING NO FINDING ON THE APPELLANT'S PRESENCE DURING KILLINGS AT BUSOGU CONVENT (GROUND OF APPEAL 16).....</b>                        | <b>58</b> |
| <b>XV. ALLEGED ERROR IN ACCEPTING TESTIMONY OF WITNESS GDD THAT HE KILLED TUTSIS ON THE APPELLANT'S ORDERS (GROUND OF APPEAL 17) ....</b>                      | <b>59</b> |
| <b>XVI. ALLEGED ERROR IN FINDING THAT THE APPELLANT FACILITATED KILLINGS AT THE RUHENERI COURT OF APPEAL (GROUND OF APPEAL 18).....</b>                        | <b>60</b> |
| <b>XVII. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT AT A ROADBLOCK DURING THE KILLING OF KANOTI'S WIFE (GROUND OF APPEAL 19) .....</b>            | <b>63</b> |
| <b>XVIII. ALLEGED ERROR IN FINDING THAT THE APPELLANT WAS PRESENT AND PARTICIPATED IN THE OVERALL KILLINGS IN MUKINGO COMMUNE (GROUND OF APPEAL 20) .....</b>  | <b>67</b> |
| <b>XIX. ALLEGED ERROR IN DENYING A MOTION CONCERNING THE ARBITRARY ARREST AND ILLEGAL DETENTION OF THE APPELLANT (GROUND OF APPEAL 22).....</b>                | <b>70</b> |
| A. PROCEDURAL HISTORY .....  | 71        |
| B. THE APPELLANT'S JURISDICTIONAL OBJECTIONS AND PRECLUSIVE EFFECTS OF PRIOR APPEALS CHAMBER DECISIONS .....   | 72        |
| C. THE APPELLANT'S ARREST AND DETENTION .....  | 74        |
| 1. Alleged Violations during Period from Arrest in Benin until Transfer to Arusha .....  | 75        |
| (a) The Parties' Submissions .....   | 76        |
| (b) Discussion .....   | 78        |
| (i) The Arrest and the Right to be Promptly Informed of the Reasons for the Arrest .....   | 80        |

|  |            |
|--|------------|
| (ii) The Appellant's Detention in Benin .....  | 82         |
| (iii) The Appellant's Right to Counsel during Questioning .....  | 86         |
| 2. Alleged Violations during Period from Transfer to Arusha until Initial Appearance .....   | 88         |
| (a) The Parties' Submissions .....   | 88         |
| (b) Discussion .....   | 90         |
| (i) The Right to Counsel.....  | 90         |
| (ii) The Right to an Initial Appearance.....   | 91         |
| 3. Conclusion .....  | 92         |
| 4. The Remedy.....   | 93         |
| <b>XX. ALLEGED ERROR IN DENYING MOTIONS SEEKING DISCLOSURE OF PRIOR STATEMENTS AND EXCLUSION OF THE TESTIMONY OF DETAINED PROSECUTION WITNESSES (GROUND OF APPEAL 23).....</b> | <b>94</b>  |
| A. THE RULING THAT RULE 68 ONLY REQUIRES DISCLOSURE OF EVIDENCE IN THE CUSTODY AND CONTROL OF THE PROSECUTION .....  | 95         |
| B. ASSISTANCE TO THE APPELLANT IN OBTAINING THE PRIOR STATEMENTS OF DETAINED PROSECUTION WITNESSES .....   | 96         |
| C. THE DECISION NOT TO EXCLUDE EVIDENCE OF DETAINED WITNESSES .....  | 98         |
| <b>XXI. ALLEGED ERROR IN DENYING A MOTION SEEKING ADMISSION INTO EVIDENCE OF A RENTAL RECEIPT (GROUND OF APPEAL 24) .....</b>  | <b>99</b>  |
| <b>XXII. ALLEGED ERRORS CONCERNING THE BURDEN AND STANDARD OF PROOF AND THE PROVISION OF A REASONED OPINION (GROUNDS OF APPEAL 1, 2, 3).....</b>                               | <b>103</b> |
| A. ALLEGED ERROR CONCERNING THE BURDEN OF PROOF (GROUND OF APPEAL 1).....  | 103        |
| B. ALLEGED ERROR CONCERNING THE STANDARD OF PROOF (GROUND OF APPEAL 2).....  | 103        |
| C. ALLEGED ERROR IN FAILING TO PROVIDE A REASONED OPINION (GROUND OF APPEAL 3).....  | 104        |
| <b>XXIII. SENTENCING.....</b>  | <b>106</b> |
| A. APPEAL AGAINST THE SENTENCE (GROUND OF APPEAL 25).....  | 107        |
| 1. Alleged Failure to Consider that the Appellant Allegedly Saved Lives of Tutsis before 1 January 1994 .....  | 108        |
| 2. Alleged Failure to Credit the Appellant for the Provision of Refuge to Tutsi Civilians in his Mukingo Home.....   | 111        |
| 3. Alleged Failure to Give Sufficient Weight to Witness JK312's Testimony.....   | 115        |
| 4. Conclusion .....  | 115        |
| B. IMPLICATIONS OF OTHER FINDINGS OF THE APPEALS CHAMBER .....   | 116        |
| 1. Vacating of Convictions Based on Superior Responsibility under Article 6(3) of the Statute .....  | 116        |
| 2. Finding of Violations to the Appellant's Rights during his Arrest and Detention .....   | 117        |
| <b>XXIV. DISPOSITION .....</b>   | <b>119</b> |
| <b>XXV. ANNEX A – PROCEDURAL BACKGROUND .....</b>  | <b>121</b> |
| A. NOTICE OF APPEAL AND BRIEFS .....   | 121        |
| B. ASSIGNMENT OF JUDGES .....  | 122        |
| C. ADDITIONAL EVIDENCE.....  | 122        |
| D. HEARING OF THE APPEAL.....  | 123        |
| <b>XXVI. ANNEX B – CITED MATERIALS/DEFINED TERMS .....</b>   | <b>124</b> |
| A. JURISPRUDENCE .....   | 124        |
| 1. ICTR.....   | 124        |

|  |     |
|--|-----|
| 2. ICTY .....                                    | 126 |
| 3. Other Jurisdictions .....                     | 128 |
| (i) Benin, Constitutional Court.....             | 128 |
| (ii) European Court of Human Rights .....        | 128 |
| (iii) Inter-American Court of Human Rights ..... | 128 |
| (iv) U.N. Human Rights Committee .....           | 128 |
| B. DEFINED TERMS.....                            | 129 |