

SUMMARY OF THE JUDGEMENT OF THE APPEALS CHAMBER

The Prosecutor v. Athanase Seromba

Case No. ICTR-2001-66-A

Good afternoon to you all. Let me call this sitting of the International Criminal Tribunal for Rwanda to order. Can everyone hear me and understand me? I would like to open this sitting by asking the Registrar please to call the case . . . Thank you. I would also like to take the opportunity to thank the Registry staff in the courtroom, as well as the interpreters and court reporters working with us today.

Now, I would like to ask for the appearances of the parties. First, Counsel for Mr. Seromba . . . Thank you. Now, the Prosecution . . . Thank you. The Appeals Chamber of the International Criminal Tribunal for Rwanda will now deliver its Judgement in the case of *The Prosecutor v. Athanase Seromba*.

In this case, the Appeals Chamber was presented with appeals from both the Prosecution and Mr. Seromba from the Judgement of Trial Chamber III of the Tribunal rendered on 13 December 2006.

In summarizing today's Judgement of the Appeals Chamber, I shall proceed first through Mr. Seromba's grounds of appeal, then through the Prosecution's grounds of appeal, though not necessarily in the order argued by the parties. This oral summary does not constitute any part of the official and authoritative Judgement of the Appeals Chamber, that is rendered in

writing and will be distributed to the parties at the end of this sitting. In addition, not every point in the Judgement will be mentioned in this summary, which will focus on the main issues.

Briefly, the background of this case is as follows. In April 1994, the period relevant to the Indictment, Mr. Seromba was a priest at Nyange parish, Kivumu Commune, Kibuye Prefecture. The Trial Chamber convicted him pursuant to Article 6(1) of the Statute for aiding and abetting the crimes of genocide (Count 1) and extermination as a crime against humanity (Count 4) for crimes occurring in Nyange Parish in April 1994. The Trial Chamber dismissed an alternative charge of complicity in genocide (Count 2) in the light of his conviction for genocide, and acquitted him of the charge of conspiracy to commit genocide (Count 3). The Trial Chamber sentenced Mr. Seromba to fifteen years' imprisonment.

I. MR. ATHANASE SEROMBA'S APPEAL

Under his first ground of appeal, Mr. Seromba submits that his trial was unfair because the Trial Chamber ordered that should he choose to testify, he would have to do so before the Defence called its last remaining witness, Witness PS2. Mr. Seromba also argues that the Trial Chamber erred in law by closing the presentation of the Defence evidence without waiting for the outcome of his appeal from a decision of the Bureau, which had denied his motion for disqualification of the Judges of the Trial Chamber.

The Appeals Chamber is satisfied that The Trial Chamber's decision to call Mr. Seromba to testify before Witness PS2 was a reasonable measure taken to avoid unnecessary delays in the proceedings. In all the circumstances, the Appeals Chamber is not satisfied that the conditions that the Trial Chamber placed on the Defence unreasonably interfered with Mr. Seromba's right to testify and violated his right to a fair trial.

For these reasons, the Appeals Chamber dismisses Mr. Seromba's first ground of appeal in its entirety.

In his second ground of appeal, Mr. Seromba submits that the Trial Chamber committed errors of law and fact by failing to find several paragraphs of the Indictment defective and by proceeding to issue its judgement on the basis thereof. The Appeals Chamber considers that an appellant who submits that he was not able to answer the charges against him because of a defective indictment bears the burden of showing that the indictment did not sufficiently plead the charges, or the material facts underlying the charges, and that the Trial Chamber erroneously found otherwise. The Appeals Chamber finds in this case that Mr. Seromba has not demonstrated that, due to a defect in the Indictment, he lacked notice of any charge or material facts that formed the basis of his conviction.

Accordingly, this ground of appeal is dismissed.

Under his eighth ground of appeal, Mr. Seromba alleges errors relating to his conviction for genocide. He first challenges the Trial Chamber's finding that

he aided and abetted the causing of serious bodily and mental harm to the Tutsis who had sought refuge in Nyange church. Mr. Seromba submits that the Trial Chamber erred in asserting that the following things contributed to the perpetration of acts causing serious bodily or mental harm to the Tutsi refugees in Nyange church, namely, his alleged prohibition of the Tutsi refugees seeking food in the banana plantation of the parish and his alleged order to gendarmes to shoot at refugees who were found there; his alleged refusal to celebrate mass for Tutsi refugees at Nyange church; and his alleged decision to expel the Tutsi employees from the parish. Mr. Seromba also challenges the Trial Chamber's finding that his "alleged refusal [to celebrate mass for the refugees] was an element of genocide".

The Appeals Chamber notes that the Trial Chamber did not clearly differentiate the *actus reus* of the underlying crime and the *actus reus* for aiding and abetting that crime. The Trial Chamber also failed to define the underlying crime to which Mr. Seromba's actions supposedly contributed. The Trial Chamber had a duty to marshal evidence regarding the existence of the underlying crime that caused serious bodily or mental harm, and it failed to do so. The Appeals Chamber finds that the Trial Chamber failed to establish with sufficient precision the crime of "causing serious bodily or mental harm". Mr. Seromba's conviction for aiding and abetting such a crime cannot stand. The Appeals Chamber therefore grants this sub-ground of appeal.

Mr. Seromba next raises alleged errors regarding the killing of members of the Tutsi group. He submits that the Trial Chamber erred in relying on the

following impugned findings in order to conclude that he committed the *actus reus* of aiding and abetting genocide through the killing of Tutsi refugees: namely, that he had expelled Tutsi employees and refugees from the Nyange parish; that he had accepted the decision to destroy the church; that he had encouraged the bulldozer driver to destroy the church; and that he had personally provided information to the bulldozer driver concerning the fragile side of the church building. Moreover, he submits that the Trial Chamber erred in law by failing to establish that he had the requisite *dolus specialis* for genocide. He submits that the relevant *mens rea* must occur prior to the commission of the crimes, but that the Trial Chamber never established that he conceived the necessary “plan” before the arrival of the Tutsi refugees at the church.

The Appeals Chamber finds that it was not unreasonable for the Trial Chamber to rely on these factual findings to conclude that Mr. Seromba substantially contributed to the killing of members of the Tutsi group. With regard to *mens rea*, the Appeals Chamber recalls that, in cases of crimes requiring specific intent, such as genocide, it is not necessary to prove that the aider and abettor shared the *mens rea* of the principal perpetrator, but that he must have known of the principal perpetrator’s specific intent. The Appeals Chamber finds that there is no requirement of a proof of a “plan” in order to establish intent to aid and abet genocide.

Accordingly, this sub-ground of appeal is dismissed.

Mr. Seromba also raises alleged errors related to the constitutive elements of genocide. He challenges the Trial Chamber's finding that he aided and abetted genocide on the basis that neither the Trial Chamber nor the Prosecution set out his responsibility towards his parishioners. The Appeals Chamber notes, however, that the crime of aiding and abetting genocide for which he was convicted is not premised on any duty owed to his parishioners. With regard to Mr. Seromba's challenge to the Trial Chamber's finding relating to his awareness of the attackers' intent, based on his lack of legal ties with these attackers, the Appeals Chamber finds this argument to be without merit. The relevant *mens rea* for aiding and abetting genocide is knowledge of the principal perpetrator's specific genocidal intent. This sub-ground of appeal is therefore dismissed.

In summary, the Appeals Chamber grants this ground of appeal in part and, subject to what follows, quashes the finding of the Trial Chamber that Mr. Seromba aided and abetted the causing of serious bodily or mental harm.

Under his third and fourth grounds of appeal, Mr. Seromba alleges several errors with respect to the Trial Chamber's findings that he prevented Tutsi refugees from taking food from the parish banana plantation and that he refused to celebrate mass for the Tutsi refugees. Because the Appeals Chamber has granted in part Mr. Seromba's eighth ground of appeal and quashed all findings related to serious bodily or mental harm, the Appeals Chamber need not address any alleged errors underpinning those findings.

Under his fifth ground of appeal, Mr. Seromba challenges several of the Trial Chamber's factual findings regarding his dismissal of four Tutsi employees from the Nyange parish, one of whom, Patrice, was subsequently killed. Mr. Seromba challenges the Trial Chamber's assessment of the evidence of Witnesses CBK and NA1. The Appeals Chamber finds that Mr. Seromba has failed to demonstrate that the Trial Chamber's assessment of the evidence and credibility of these witnesses was erroneous.

This ground of appeal is therefore dismissed in its entirety.

Under his sixth ground of appeal, Mr. Seromba raises several challenges to the Trial Chamber's findings that he turned away several refugees from the presbytery, including Meriam, who was subsequently killed by the attackers. He challenges the Trial Chamber's assessment of the evidence of Witnesses CBJ, CBK, NA1 and FE55. The Appeals Chamber finds that Mr. Seromba has not demonstrated that the Trial Chamber erred in its evaluation of the evidence or credibility of these witnesses. The Trial Chamber did not therefore err in finding that Mr. Seromba turned away refugees from the presbytery, including Meriam, who was subsequently killed by attackers.

Consequently, this ground of appeal is dismissed.

Under his seventh ground of appeal, Mr. Seromba challenges an alleged defect in the form of the Indictment, and challenges the Trial Chamber's assessment of the evidence with respect to his convictions for aiding and

abetting genocide as well as extermination as a crime against humanity for his role in the destruction of Nyange Church.

The allegation that Mr. Seromba was informed of the decision to destroy the church and that he accepted this decision is a material fact; it was not specifically pleaded in Count 4 of the Indictment and the Indictment was therefore defective in this regard. However, the Appeals Chamber has previously held that when an appellant raises a defect in an indictment for the first time on appeal, he bears the burden of showing that his ability to prepare his defence was materially impaired. Mr. Seromba has not met this burden. Further, the Appeals Chamber considers that this defect in the Indictment was cured by timely, clear, and consistent information from the Prosecution.

Mr. Seromba also challenges the Trial Chamber's assessment of the evidence of Witnesses CBJ, CBK, CDL, CBR and FE32 in relation to this incident. The Appeals Chamber is satisfied that the Trial Chamber was not unreasonable in its reliance or otherwise on these witnesses.

Accordingly, this ground of appeal is dismissed in its entirety.

In his ninth ground of appeal, Mr. Seromba challenges the Trial Chamber's finding that, by his conduct, he substantially contributed to the destruction of the church which led to the death of the approximately 1,500 refugees, and his conviction for aiding and abetting extermination on the basis of this finding.

The Trial Chamber found that Mr. Seromba held discussions with the communal authorities and that he accepted their decision to destroy the church. Moreover, the Trial Chamber found that Mr. Seromba encouraged the bulldozer driver to destroy the church and that he indicated its fragile side to the driver. In support of this ground of appeal, Mr. Seromba refers to his arguments which challenged these findings. The Appeals Chamber has already found that Mr. Seromba's challenge to these underlying factual findings is without merit. The Appeals Chamber notes that the finding of the Trial Chamber, which characterized Mr. Seromba's conduct as aiding and abetting the crime of extermination, is also subject to an appeal by the Prosecution and for practical reasons will be discussed later in that connection.

Finally, the Appeals Chamber rejects Mr. Seromba's assertion that the Trial Chamber erred in law in convicting him of extermination as a crime against humanity because he did not conceive or endorse a plan to destroy the church. As the Appeals Chamber has recognized in other cases, while the existence of a plan can be evidentially relevant, it is not a separate legal element of a crime against humanity and, in particular, the proof of a plan is not a pre-requisite to a conviction for extermination.

This ground of appeal is therefore dismissed in its entirety.

Mr. Seromba's tenth ground of appeal, in which he challenges his sentence of fifteen years imprisonment, will be addressed together with the Prosecution's appeal on sentence.

II. PROSECUTION APPEAL

To the Prosecution Appeal I now turn. The Prosecution first submits that the Trial Chamber erred in convicting Mr. Seromba only for aiding and abetting genocide, and in not convicting him for “committing” this crime.

The Appeals Chamber recalls that it previously held in *Gacumbitsi* that:

[i]n the context of genocide, ..., “direct and physical perpetration” need not mean physical killing; other acts can constitute direct participation in the *actus reus* of the crime.

The Appeals Chamber therefore finds, Judge Liu dissenting, that the Trial Chamber erred in law by holding that “committing” requires direct and physical perpetration of the crime by the offender. The Appeals Chamber considers that the correct legal standard is whether Mr. Seromba’s actions were “as much an integral part of the genocide as were the killings which [they] enabled.”

First, as to Mr. Seromba’s conviction for aiding and abetting genocide by means of destroying the church. The attacks against the Tutsi refugees at Nyange parish resumed in the morning of 16 April 1994. When it became apparent that it was impossible to destroy the church by using bullets and grenades, Kayishema, Ndahimana, Kanyarukiga, Habarugira and other persons decided to use bulldozers instead. They turned to Mr. Seromba,

explaining that there were no other means left to destroy the church to reach the refugees, and offered him the option to use the bulldozers. Mr. Seromba stated: “If you have no other means, bring the bulldozers then, and destroy the church”.

The authorities then called for a bulldozer driver and ordered him to destroy the church. The bulldozer driver, however, did not immediately accept that order of the authorities and turned to Mr. Seromba. He asked Mr. Seromba three times whether he should destroy the church, and each time Mr. Seromba answered in the affirmative. Mr. Seromba emphasized that “[d]emons ha[d] gotten in there [the church]” and that when “there are demons in the church, it should be destroyed.” Mr. Seromba also pointed to the part of the church where the bulldozer driver should start. The bulldozer driver accordingly proceeded to destroy the church, which caused the deaths of the approximately 1,500 Tutsis who had sought refuge there.

On the basis of the factual findings as more fully set out in the Appeal Judgement, the Appeals Chamber finds that Mr. Seromba approved and embraced as his own the decision of Kayishema, Ndahimana, Kanyarukiga, Habarugira, and other persons to destroy the church in order to kill the Tutsi refugees. It is irrelevant that Mr. Seromba did not personally drive the bulldozer that destroyed the church. What is important is that Mr. Seromba fully exercised his influence over the bulldozer driver who, as the Trial Chamber’s findings demonstrate, accepted Mr. Seromba as the only authority, and whose directions he followed. The Appeals Chamber finds, Judge Liu dissenting, that Mr. Seromba’s acts, which cannot be adequately

described by any other mode of liability pursuant to Article 6(1) of the Statute than “committing”, indeed were as much an integral part of the crime of genocide as the killings of the Tutsi refugees. Mr. Seromba was not merely an aider and abetter but became a principal perpetrator in the crime itself.

The Appeals Chamber recalls that an accused evinces the requisite *mens rea* for committing a crime when he acts with an intent to commit that crime. This stands in contrast to the *mens rea* for aiding and abetting, which “is indicated by the requirement that the act of participation be performed with knowledge that it will assist the principal in the commission of the criminal act.” The Appeals Chamber finds, Judge Liu dissenting, that the only reasonable conclusion to be drawn is that, by his acts, Mr. Seromba intended that the approximately 1,500 Tutsi refugees in the church be killed. Therefore, the *mens rea* requirement for committing is satisfied.

The Appeals Chamber now turns to the Prosecution’s submission that the Trial Chamber erred in finding that Mr. Seromba did not have the required specific intent to incur liability for genocide. The Trial Chamber correctly held that genocide is a crime requiring specific intent, and that this intent may be proved through inference from the facts and circumstances of a case. The Appeals Chamber finds, Judge Liu dissenting, that while the Trial Chamber correctly set out the applicable law, it erred in concluding that the Prosecution had not proved that Mr. Seromba acted with the required specific intent. Having reviewed the Trial Chamber’s findings of fact and the underlying transcripts of witness testimony, the Appeals Chamber finds that

no reasonable trier of fact could have reached the conclusion that Mr. Seromba did not have genocidal intent.

The Appeals Chamber therefore finds, Judge Liu dissenting, that the Trial Chamber erred by failing to convict Mr. Seromba for “committing” genocide.

The Appeals Chamber now turns to Mr. Seromba’s conviction for aiding and abetting genocide in relation to the expulsion of Tutsi employees and refugees. The Trial Chamber found that Mr. Seromba turned Tutsi employees and Tutsi refugees out of Nyange parish and thereby assisted in the killing of several Tutsi refugees, including Patrice and Meriam. It found that in light of the security situation that prevailed in Nyange parish, he could not have been unaware that he thereby substantially contributed to their being killed by the attackers. The Trial Chamber found that based on this conduct, Mr. Seromba aided and abetted the killing of refugees in Nyange church, and found him guilty of aiding and abetting genocide.

The Appeals Chamber is not convinced that, based on these factual findings, it was unreasonable for the Trial Chamber to find that Mr. Seromba aided and abetted in the killing of the refugees, including Meriam and Patrice, instead of finding him guilty of “committing”.

For the foregoing reasons, the Appeals Chamber grants this sub-ground of appeal in part, finding, Judge Liu dissenting, that Mr. Seromba committed genocide, by virtue of his role in the destruction of the church in Nyange

Parish. The Appeals Chamber unanimously affirms that Mr. Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam.

The Prosecution next challenges Mr. Seromba's conviction for aiding and abetting extermination, submitting that the arguments already developed with respect to the commission of the crime of genocide also apply to Mr. Seromba's commission of extermination as a crime against humanity.

Notwithstanding the confinement of the *Gacumbitsi* dictum regarding committing to genocide, the Appeals Chamber, Judge Liu dissenting, can find no reason why its reasoning should not equally apply to the crime of extermination. The key question raised by the *Gacumbitsi* dictum is what other acts can constitute direct participation in the *actus reus* of the crime. As noted above, the Appeals Chamber is satisfied that the acts of Mr. Seromba set out in the Judgement were sufficient to constitute direct participation in the *actus reus* of the crime of genocide, and is equally satisfied that the same acts are sufficient to constitute direct participation in the crime of extermination. With respect to Mr. Seromba's *mens rea*, the Appeals Chamber is satisfied that the role he played in the events that led to the destruction of the church, his knowledge that such destruction would inevitably result in the death of a large number of Tutsi civilians, as well as his awareness of the widespread and systematic attack against the Tutsi population occurring at the time, all demonstrate that he possessed the required intent to commit extermination. The Appeals Chamber, therefore, finds, Judge Liu dissenting, that the Trial Chamber erred in concluding that Mr. Seromba had not committed extermination as a crime against humanity.

The Appeals Chamber therefore grants this sub-ground of appeal.

Finally, the Prosecution challenges the Trial Chamber's finding that it had not established that Mr. Seromba planned, or ordered, the massacre of Tutsi refugees. The Prosecution's submission regarding planning is readily dismissed. While the Prosecution maintains that there was a "plan of action", none of the factual findings referred to by the Prosecution supports a finding that there existed a genocidal plan in which Mr. Seromba took part.

On the question of whether Mr. Seromba ordered the commission of genocide as well as extermination as a crime against humanity, in the light of the factual conclusions made by the Trial Chamber, which were not disturbed on appeal, the Appeals Chamber finds that the Prosecution did not demonstrate that Mr. Seromba's conduct constituted the *actus reus* necessary to prove his participation by ordering the commission of genocide or extermination as a crime against humanity. Therefore, the Appeals Chamber finds that the Trial Chamber did not err in concluding that Mr. Seromba had not ordered genocide or extermination as a crime against humanity.

Consequently, this sub-ground of appeal is dismissed.

In summary, the Appeals Chamber grants the Prosecution's first ground of appeal in part, finding that Mr. Seromba committed genocide as well as extermination as a crime against humanity by virtue of his role in the destruction of the church in Nyange Parish and the consequent death of the

approximately 1,500 Tutsi refugees sheltering inside. The Appeals Chamber also affirms the Trial Chamber's finding that Mr. Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam, which are separate acts from the killings resulting from the destruction of the church.

The Appeals Chamber now turns to the Prosecution's second ground of appeal. The Prosecution alleges that the Trial Chamber erred in law and in fact when it found Mr. Seromba not guilty of conspiracy to commit genocide.

The Appeals Chamber finds that the Prosecution has failed to demonstrate how the Trial Chamber erred in finding that it had not been proven beyond reasonable doubt that Mr. Seromba held meetings with the communal authorities "for the purpose of planning the extermination of Tutsi refugees in Nyange parish". The Appeals Chamber is also of the view that the Prosecution has also not shown that, even in the absence of an express agreement, the only reasonable inference from the evidence adduced at trial was that Mr. Seromba participated in a conspiracy to commit genocide.

The Appeals Chamber therefore finds that the Prosecution has failed to show that the Trial Chamber erred in not convicting Mr. Seromba for conspiracy to commit genocide. Consequently, the Prosecution's submission that convictions for genocide and conspiracy to commit genocide could be sustained on the same set of facts need not be considered.

This ground of appeal is therefore dismissed.

The Appeals Chamber now turns to the issue of sentencing. The Trial Chamber found Mr. Seromba guilty of aiding and abetting genocide (Count 1) and guilty of aiding and abetting extermination as a crime against humanity (Count 4), and sentenced him to 15 years' imprisonment. Both Mr. Seromba and the Prosecution appeal this sentence. The Appeals Chamber granted, in part, Ground 1 of the Prosecution's appeal, holding that Mr. Seromba's role in the destruction of the church amounted to the commission of genocide as well as extermination as a crime against humanity. The Appeals Chamber has also upheld the conviction for aiding and abetting genocide based on the expulsion of the Tutsi employees and refugees, and has quashed the finding of the Trial Chamber that Mr. Seromba aided and abetted the causing of serious bodily and mental harm. In view of this, the Appeals Chamber will quash the sentence imposed by the Trial Chamber and will enter a new sentence. Consequently, the appeals against the sentence of 15 years' imprisonment imposed by the Trial Chamber have not been considered. However, the Appeals Chamber has reviewed the arguments made in these appeals, particularly those relating to the Trial Chamber's assessment of the aggravating and mitigating factors, being the gravity of the crimes, and Mr. Seromba's age, position, character and his voluntary surrender. The Appeals Chamber has taken these arguments into account when determining a new sentence.

The Appeals Chamber considers that the crimes for which Mr. Seromba has been convicted are egregious in scale and inhumanity. The Appeals Chamber stresses that Mr. Seromba knew that approximately 1,500 refugees were in

the church and that they were bound to die or be seriously injured as a consequence of his approval that the church be bulldozed, knowing that the refugees had come to the church seeking safety.

DISPOSITION

I shall now read out in full the operative paragraphs of the Appeals Chamber's disposition. Mr. Seromba, will you please stand.

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 26 November 2007;

SITTING in open session;

AFFIRMS, unanimously, the Trial Chamber's dismissal of Count 2 of the Indictment (Complicity in Genocide) and the acquittal of Athanase Seromba as regards Count 3 of the Indictment (Conspiracy to Commit Genocide);

ALLOWS, unanimously, Athanase Seromba's Ground of Appeal 8, in part; and **QUASHES**, unanimously, the Trial Chamber's finding that Athanase Seromba aided and abetted genocide by substantially contributing to the causing of serious bodily or mental harm by prohibiting the Tutsi refugees from getting food from the Nyange Parish's banana plantation and by refusing to celebrate mass for them;

DISMISSES Athanase Seromba's appeal in all other respects;

ALLOWS, in part, by majority, Judge Liu dissenting, the Prosecution's Ground of Appeal 1; **HOLDS**, by majority, Judge Liu dissenting, that Athanase Seromba committed genocide as well as extermination as a crime against humanity, by virtue of his role in the destruction of the church in Nyange Parish; and **AFFIRMS**, unanimously, the Trial Chamber's finding that Athanase Seromba aided and abetted genocide in relation to the killings of Patrice and Meriam, which are separate acts from the killings resulting from the destruction of the church;

QUASHES, unanimously, the sentence of fifteen years' imprisonment and **ENTERS**, by majority, Judge Liu dissenting, a sentence of imprisonment for the remainder of Athanase Seromba's life, subject to credit being given under Rule 101(D) of the Rules for the period already spent in detention from 6 February 2002;

DISMISSES the Prosecution's appeal in all other respects;

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

ORDERS, in accordance with Rules 103(B) and 107 of the Rules, that Athanase Seromba is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.

Judge Liu appends a Dissenting Opinion.

Mr. Seromba, you may be seated.

I now request the Registrar to please deliver copies of the Judgement to the parties in this case. This hearing of the Appeals Chamber of the International Criminal Court for Rwanda stands adjourned.