

ICTR-98-42-A  
01-09-2011  
(176/A - 174/A)

176/A  
AMSTMP



International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, presiding  
Judge Liu Daqun  
Judge Andrésia Vaz  
Judge Theodor Meron  
Judge Carmel Agius

Registrar: Adama Dieng

Date of filing: 1 September 2011

THE PROSECUTOR

v.

Pauline NYIRAMASUHUKO  
Arsène Shalom NTAHOBALI  
Sylvain NSABIMANA  
Alphonse NTEZIRYAYO  
Joseph KANYABASHI  
Élie NDAYAMBAJE

Case No. ICTR-98-42-A

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PROSECUTOR'S NOTICE OF APPEAL

Office of the Prosecutor

Hassan Bubacar Jallow  
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Defence Counsel

Nicole Bergevin for Pauline Nyiramasuhuko  
Normand Marquis for Arsène Shalom Ntahobali  
Josette Kadji for Sylvain Nsabimana  
Titinga Frédéric Pacere for Alphonse Nteziryayo  
Michel Marchand for Joseph Kanyabashi  
Pierre Boulé for Élie Ndayambaje

1. The Prosecutor, acting under Article 24 of the Tribunal's Statute and Rule 108 of the Rules of Procedure and Evidence, files this Notice of Appeal from the Judgement and Sentence pronounced by Trial Chamber II (Trial Chamber) on 24 June 2011, issued in writing on 14 July 2011, in the case *Prosecutor v. Pauline Nyiramasuhuko, Shalom Ntahobali, Sylvain Nsabimana, Joseph Kanyabashi, Alphonse Nteziryayo, and Élie Ndayambaje*, case no. ICTR-98-42-T (Judgement).

#### Ground 1

2. In paragraph 5753 of the Judgement, the Trial Chamber erred in law or in fact, or in both, when it failed to find that Kanyabashi's speech at Nsabimana's swearing-in ceremony on 19 April 1994 was an integral part of the large-scale genocidal massacres that took place in Butare after 19 April 1994, and when it found that that speech did not substantially contribute to the massacres.

3. The Appeals Chamber should find that by his speech on 19 April 1994 at Sylvain Nsabimana's swearing-ceremony, Kanyabashi committed genocide. In the alternative, the Appeals Chamber should find that Kanyabashi instigated, or aided and abetted genocide based by that act. Based on the additional conviction that will result from the correction of this error, Kanyabashi's sentence should be increased accordingly.

#### Ground 2

4. In paragraph 5993 of the Judgement, the Trial Chamber erred in law or in fact, or in both, when it found that Kanyabashi's speech at Nsabimana's swearing in ceremony on 19 April 1994 did not rise to the level of directly inciting genocide, and that it did not constitute committing the crime of direct and public incitement to commit genocide. The Trial Chamber also erred in finding that there was insufficient evidence that Kanyabashi substantially contributed to the incitements made by Sindikubwabo and Kambanda, and that Kanyabashi was not responsible for aiding and abetting these incitements.

5. The Appeals Chamber should find that by his speech on 19 April 1994 at Sylvain Nsabimana's installation ceremony, Kanyabashi committed the crime of

direct and public incitement to genocide. In the alternative, the Appeals Chamber should find that Kanyabashi aided and abetted Sindikubwabo's and Kambanda's incitements. Based on the additional conviction that will result from the correction of this error, Kanyabashi's sentence should be increased accordingly.

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Hassan Bubacar Jallow  
The Prosecutor

Dated this 1<sup>st</sup> day of September, 2011, at Arusha, Tanzania.

