

ICTR-96-15-A

(257-255)

14-06-99



International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994

Case No.: ICTR-96-15-A

Date: 11 June 1999

Original: English

IN THE APPEALS CHAMBER

Before: Judge Gabrielle Kirk McDonald, Presiding
Judge Mohamed Shahabuddeen
Judge Lal Chand Vohrah
Judge Wang Tieya
Judge Rafael Nieto-Navia

Registrar: Mr. Agwu U. Okali

Decision of: 11 June 1999

1999 JUN 14 P 3:35
ICTR
CRIMINAL REGISTRY
RECEIVED

JOSEPH KANYABASHI

v.

THE PROSECUTOR

**JOINT AND SEPARATE OPINION OF
JUDGE McDONALD AND JUDGE VOHRAH/Corr.**

Counsel for the Appellant:

Mr. Michel Marchand
Mr. Michel Boyer

The Office of the Prosecutor:

Mr. David Spencer
Mr. Ibukunolu Babajide
Mr. Chils Eboe-Osuji
Mr. Robert Petit

Case No.: ICTR-96-15-A

11 June 1999

substantive grounds supporting legitimate fears that the independence and impartiality of Trial Chamber I could be compromised³⁶.

44. President Kama assigned Judges Sekule and Pillay and himself to Trial Chamber I and thereafter directed the Joinder Motion and the Leave Request to that Trial Chamber. In so doing, President Kama evinced his concern for ensuring the smooth administrative functioning of the Chambers since only these particular Judges had not reviewed any Indictment of the accused sought to be joined for trial. This justification is reflected in his comment during the proceedings on the Prosecutor's motions where he stated:

[W]e believe [sic] that for the proper administration of justice and also for a fair trial, it was not responsible that Judges who have been disqualified be able to sit in a Chamber which are [sic] considering amendments for indictments [sic] and Motions for Joinder.³⁷

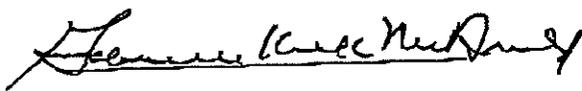
45. We fail to see how the statement made by Judge Kama, his decision to re-compose Trial Chamber I, or his decision to place both the Leave Request and the Joinder Motion for joint consideration before the re-composed Trial Chamber I, indicates any pre-determined judgement to grant the Joinder Motion prior to the hearing. We find that President Kama's administrative decision in the assignment of the Judges does not constitute a departure from the Rules, conforms with the independence and freedom from external influences which are necessary in the administration of justice, is justified in the present circumstances and does not support the Appellant's contention that the re-composition of the Trial Chamber gives the appearance of a lack of independence and impartiality. Additionally, the decision to re-compose Trial Chamber I demonstrates President Kama's objectivity in balancing the

³⁶ In advancing his arguments, the Appellant has failed to take into consideration the fact that the Prosecutor addressed the Leave Request not to a numbered Trial Chamber, but to the following specific Judges: Judge Sekule, Judge Khan and Judge Pillay. These are the same Judges before whom the Appellant had his initial appearance. It follows that if the Prosecutor had intended to influence Judge Kama, Judge Sekule and Judge Pillay, (assigned to Trial Chamber I as re-composed), she would have addressed the motion to them by name. As regards the Joinder Motion, the Prosecutor did not address this motion to a specific Trial Chamber, nor did she include the names of the Judges who would preside over the hearing of this motion.

³⁷ *Elie Ndayambaje and Others, Proceedings on Motions Against Composition of Chamber, Motion for Amendment of Indictment and Joinder*, Case No. ICTR-96-8-T, 24 September 1998, at p. 30. As discussed above, of the six Judges appointed to the International Tribunal, only Judge Kama, Judge Sekule and Judge Pillay had not reviewed indictments against the accused who are the subject to the Prosecutor's motions. In any event, only these Judges could sit on the Trial Chamber conducting the trial of the Appellant and the five additional accused if the Joinder Motion is granted.

On page 18, footnote 36, the second sentence which states: "These are the same Judges before whom the Appellant had his initial appearance", should be deleted. Footnote 36 should read as follows: "In advancing his arguments, the Appellant has failed to take into consideration the fact that the Prosecutor addressed the Leave Request not to a numbered Trial Chamber, but to the following specific Judges: Judge Sekule, Judge Khan and Judge Pillay. It follows that if the Prosecutor had intended to influence Judge Kama, Judge Sekule and Judge Pillay, (assigned to Trial Chamber I as re-composed), she would have addressed the motion to them by name. As regards the Joinder Motion, the Prosecutor did not address this motion to a specific Trial Chamber, nor did she include the names of the Judges who would preside over the hearing of this motion.

Done in both English and French, the English text being authoritative.



Gabrielle Kirk McDonald


Lal Chand Vohrah

Dated this eleventh day of June 1999
At The Hague
The Netherlands

