



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

12320
#m

ICTR-98-44-T

17-5-2004

(12320 - 12318)

THE BUREAU

Before: Judge Erik Møse
Judge William H. Sekule

Registrar: Adama Dieng

Date: 17 May 2004

JUDICIAL RECORDS
1671
2004 MAY 17 9 50
[Signature]

THE PROSECUTOR

v.

EDOUARD KAREMERA
ANDRE RWAMAKUBA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

Case No. : ICTR-98-44-T

DECISION ON MOTIONS BY NZIRORERA AND RWAMAKUBA FOR
DISQUALIFICATION OF JUDGE VAZ

The Office of the Prosecutor
Don Webster
Dior Fall
Ifeoma Ojemeni
Holo Makwaia

Counsel for Nzirorera
Peter Robinson

Counsel for Rwamakuba
David Hooper
Andreas O'Shea

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as the Bureau, composed of Judge Erik Møse, President of the Tribunal, and Judge William H. Sekule, Presiding Judge of Trial Chamber II, in accordance with Rule 23(A) of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED of the oral application of the Defence for Nzirorera, made to Trial Chamber III on 27 April 2004;¹ the “Supplemental Motion for Disqualification of Judge Andréia Vaz”, filed by the Defence for Nzirorera on 29 April 2004; the “Request and Argument on Behalf of Dr. Andre Rwamakuba Seeking the Recusal or Disqualification of Her Honour Judge Andréia Vaz”, filed on 11 May 2004;

CONSIDERING the oral submissions of the parties to the Trial Chamber on 27 April 2004; the Prosecution “Notice of Intention to Respond to Nzirorera’s Supplemental Motion for Disqualification of Judge Andréia Vaz”, filed on 30 April 2004; the Prosecution “Response to Nzirorera’s Supplemental Motion for Disqualification of Judge Andréia Vaz”, filed on 10 May 2004; the “Reply Brief” filed by the Defence for Nzirorera on 12 May 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The present decision concerns applications by the Defence for Nzirorera and for Rwamakuba for the disqualification of Judge Vaz, who is the Presiding Judge of their trial, on the basis of her association with a Prosecution attorney in the case, Ms. Dior Fall. The Defence for Nzirorera made an oral request for disqualification on this basis under Rule 15 before Trial Chamber III on 27 April 2004. After this request was rejected, the Defence for Nzirorera filed a written motion before the Bureau of the Tribunal to the same effect, followed by a similar application by the Defence for Rwamakuba. These motions were preceded by motions by Nzirorera, Ngirumpatse, and Karemera for the disqualification of all three trial judges for real or apprehended bias, as demonstrated by rulings in the case.² The motions concerning all three judges raise different issues, and the Bureau has decided them separately today.³ Another motion for the disqualification of Judge Vaz, filed by the Defence for Ngirumpatse, concerning a radio interview, raises distinct issues which have also been addressed in a separate decision of today.⁴

2. Judge Vaz, who is a member of the Bureau in her capacity as Vice-President of the Tribunal under Rule 23(A), has recused herself from consideration of the present application. As the position of Presiding Judge of Trial Chamber III is currently vacant, the Bureau is presently comprised of Judges Møse and Sekule.

SUBMISSIONS

3. The Defence for Nzirorera and Rwamakuba argue that there is an appearance of bias within the meaning of Rule 15 (A). It is acknowledged that Judge Vaz is an honourable and

¹ T. 27 April 2004 p. 28.

² Motion for Disqualification of Trial Chamber III Judges, 29 March 2004 (Karemera); Request to the Bureau for the Recusal of the Judges of Trial Chamber III, 30 March 2004 (Ngirumpatse); Motion for Disqualification of Judges Andresia Vaz, Florence Rita Arrey, and Flavia Lattanzi, 30 March 2004 (Nzirorera).

³ Decision on Motion By Karemera for Disqualification of Trial Judges (Bureau), 17 May 2004; Decision on Motion By Nzirorera for Disqualification of Trial Judges (Bureau), 17 May 2004; Decision on Motion By Ngirumpatse for Disqualification of Trial Judges (Bureau), 17 May 2004.

⁴ Decision on Motion by Ngirumpatse for Disqualification of Judge Vaz (Bureau), 17 May 2004.

respected member of the international criminal judiciary. While close friendship with counsel for a party in the case is not always a basis for a reasonable apprehension of bias, the combination of friendship and cohabitation for some period at the pre-trial stage gives rise to a reasonable apprehension in the present case.

4. The Prosecution opposes the Nzirorera motion. It asserts that there is no reasonable apprehension of bias. It is important to take into account the multicultural environment of the Tribunal and the particular circumstances of Arusha. It should be assumed that the Judge can disabuse her mind of irrelevant personal beliefs and predispositions. There are no valid reasons for disqualification.

DELIBERATIONS

5. Rule 15(B) provides that:

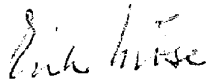
Any party may apply to the Presiding Judge of a Chamber for the disqualification of a Judge of that Chamber from a trial or appeal on the above grounds. After the Presiding Judge has conferred with the Judge in question, the Bureau if necessary, shall determine the matter.

6. In a letter dated 14 May 2004, Judge Vaz has informed the President that she has decided to withdraw from the case. It follows from Rule 15 (B) that it is not necessary for the Bureau to determine the matter.

FOR THE ABOVE REASONS, THE BUREAU

DECLARES the motions moot.

Arusha, 17 May 2004



Erik Møse
President



William H. Sekule
Presiding Judge of Trial Chamber II

[Seal of the Tribunal]

