



UNITED NATIONS  
NATIONS UNIES

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

12317  
HAM

ICTR-98-44-T

**THE BUREAU**

17-5-2004

(12317-12314)

**Before:** Judge Erik Møse  
Judge William H. Sekule

**Registrar:** Adama Dieng

**Date:** 17 May 2004

**THE PROSECUTOR**

v.

**EDOUARD KAREMERA  
ANDRE RWAMAKUBA  
MATHIEU NGIRUMPATSE  
JOSEPH NZIRORERA**

*Case No. : ICTR-98-44-T*

AD  
JUDICIAL RECORDS  
2004 MAY 17 10 00 AM  
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**DECISION ON MOTION BY NGIRUMPATSE FOR DISQUALIFICATION OF  
TRIAL JUDGES**

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**The Office of the Prosecutor**

Don Webster  
Dior Fall  
Ifeoma Ojemeni  
Holo Makwaia

**Counsel for Karemera**

Charles Roach  
Frederick Weyl

[Handwritten initials]

**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 “Request to the Bureau for the Recusal of the Judges of Trial Chamber III”, filed by the Defence for Ngirumpatse on 30 March 2004;

**CONSIDERING** the “Mémoire complémentaire pour la Défense de M. Ngirumpatse sur la Requête en Disqualification de Mesdames les Juges Vaz, Arrey, et Lattanzi”, filed on 4 May 2004;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Accused, Mathieu Ngirumpatse, requests the disqualification of all three judges hearing his trial, Judges Vaz, Lattanzi and Arrey, on the basis of their lack of impartiality, pursuant to Rule 15(B). Similar applications, also decided today, have been filed by two co-accused, Joseph Nzirorera and Edouard Karemera.<sup>1</sup>

2. Judge Vaz, who is normally 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 composed of Judges Møse and Sekule.

**SUBMISSIONS**

3. The Defence claims that a pattern of erroneous decisions against the Accused has given rise to an appearance that the judges hearing his case are biased. In particular, the Defence submits that all evidence heard by the Trial Chamber under an Indictment which was subsequently amended was improper and that the trial must begin *de novo* with new judges. Pending appeal of that issue to the Appeals Chamber, the Trial Chamber should not have continued to hear testimony. The Defence also claims that the Chamber has failed to take the necessary steps to facilitate meetings between Defence investigators and the Accused at the United Nations Detention Facility; that the Chamber has arbitrarily limited cross-examination; and that the judges are not disposed to issue a subpoena for Paul Kagame, the current President of Rwanda.

4. The Prosecution opposes the application in a consolidated response to all three applications for disqualification alleging bias on the basis of decisions in the case. It argues that no decision has been rendered by the Presiding Judge in accordance with Rule 15(B) and that, accordingly, the Bureau is not properly seized of the application. Further, the only bases for disqualification provided for in Rule 15(A) are “personal interest” or “association”, neither of which have been asserted by the Defence, and that the record of decisions is not a valid basis for asserting bias. Even assuming that such decisions can be used as evidence of bias, the presumption of judicial impartiality has not been rebutted by the Defence.

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<sup>1</sup> Motion for Disqualification of Trial Chamber III Judges, 29 March 2004 (Karemera); Motion for Disqualification of Judges Andresia Vaz, Florence Rita Arrey, and Flavia Lattanzi, 30 March 2004 (Nzirorera).

## DELIBERATIONS

5. On 7 April 2004, the Presiding Judge announced the Judges' view that there was no need for their withdrawal from the case on the basis of the present application.<sup>2</sup> In accordance with Rule 15(B), the application is now properly before the Bureau, which has issued two decisions on applications for disqualification filed by two other accused in the present case.<sup>3</sup> The principles of law applicable to the present motion are set forth at length therein and need not be repeated again here.

6. By motion dated 15 March 2004, the Accused placed the alleged errors of law connected to the conduct of the trial under the prior version of the Indictment before the Appeals Chamber.<sup>4</sup> The central submission was that the effect of an Appeals Chamber decision of 19 December 2003, vacating a Trial Chamber decision of 8 October 2003 which had rejected certain amendments to the Indictment requested by the Prosecution, was to nullify the Indictment under which the Trial Chamber had proceeded. The consequence, according to the motion, was that proceedings under that nullified Indictment were improper and that the trial must be re-commenced *de novo*. On 8 April 2004, the Appeals Chamber dismissed the motion, finding that "the 19 December Decision did not declare the operative indictment at trial to be a nullity and did not deprive the Trial Chamber of jurisdiction to conduct the proceedings on the basis of that indictment".<sup>5</sup> The Bureau is of the view that this finding definitively contradicts the alleged illegality or impropriety in the proceedings conducted under the prior version of the Indictment. The submissions in paragraphs one, two, five and six of the application are accordingly rejected.

7. The remaining grounds of alleged bias are vague and unsupported by any references to decisions, rulings, or any other material from conduct of proceedings. The application does not describe the submissions of the Defence to the Chamber concerning meetings at the detention centre; the circumstances in which cross-examination was limited by the Chamber; or the basis or meaning of the allegation that the judges are not disposed to issuing subpoenas. Consideration of these matters as described would require the Bureau to construct an argument on behalf of the applicant by speculating as to the nature of the complaints. Consequently, the Defence has not provided any support for its allegations of bias.

8. The applicant has failed to establish that a reasonable apprehension of bias could arise on the basis of the arguments advanced by the Defence, whether viewed individually or cumulatively.

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<sup>2</sup> T. 7 April 2004 p. 56 ("Decision on motions for disqualification, both oral and written motions filed by Counsels Robinson and Roach on 29 and 30 March 2004: The Judges have been seized by the various motions and are of the opinion there is no need for them to withdraw themselves from the instant case. The Bureau of the Tribunal must now decide on these motions, as provided by Rule 15 of the Rules").

<sup>3</sup> *Karemera et al.*, Decision on Motion By Nzirorera for Disqualification of Trial Judges (Bureau), 17 May 2004; Decision on Motion By Karemera for Disqualification of Trial Judges (Bureau), 17 May 2004.

<sup>4</sup> Notice of Appeal From the Decision of Trial Chamber III of February 19, 2004 Dismissing the Motion for Declaration of Mistrial, 15 March 2004.

<sup>5</sup> *Karemera et al.*, Decision on Interlocutory Appeal Regarding Motion for Declaration of Mistrial and On Motion to Suspend Trial (AC), 8 April 2004, p. 4.

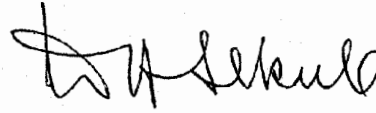
**FOR THE ABOVE REASONS, THE BUREAU**

**DENIES** the application.

Arusha, 17 May 2004



Erik Møse  
President



William H. Sekule  
Presiding Judge of Trial Chamber II

[Seal of the Tribunal]

