

2495/A
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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding Judge
Judge Mohamed Shahabuddeen
Judge Florence Mumba
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama Dieng

Decision of: 4 June 2004

ICTR-96-14-A
7th June 2004
(2495/A - 2493/A)

Eliézer NIYITEGEKA

V.

THE PROSECUTOR

Case No. ICTR-96-14-A

2004 JUN - 7 P 8 44
ICTR
PROSECUTOR

NOTICE REGARDING RECENT *EX PARTE* COMMUNICATION

Counsel for the Appellant

Ms. Sylvia Geraghty
Feargal Kavanagh S.C.

Counsel for the Prosecutor

Mr. Hassan Bubacar Jallow
Ms. Melanie Werrett
Mr. James Stewart

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1. The Appeals Chamber issues this notification to the parties with regard to a recent *ex parte* communication.
2. On 24 April 2004, Judge Weinberg de Roca, a member of the Bench of the Appeals Chamber, sent an electronic mail message to Ms. Phyllis Grobl, an employee of the Registry of the International Tribunal, requesting materials from the record of the trial in this case. On 7 May 2004, Ms. Grobl forwarded the request to Ms. Melinda Pollard, an employee of the Office of the Prosecutor, and asked that Ms. Pollard "contact [Judge Weinberg de Roca] with a status report."
3. On Sunday, 9 May 2004, Ms. Pollard sent an electronic mail message in response. Although the message was addressed to Ms. Grobl with a carbon-copy to Judge Weinberg de Roca, the salutation addressed Judge Weinberg de Roca only. The first paragraph of Ms. Pollard's message consisted of two sentences addressing Judge Weinberg de Roca's request for record materials. Three lengthier paragraphs followed that discussed the appeal in this case and offered characterizations of the arguments proffered by the Defence.
4. On Monday, 10 May 2004, Judge Weinberg de Roca circulated this *ex parte* communication to the President of the International Tribunal, to the other Judges on the Appeals Chamber Bench in this case, to the Prosecutor, to counsel for the Appellant, and to two of the International Tribunal's Senior Legal Officers.
5. On 19 May 2004, Judge Weinberg de Roca received a letter from the Prosecutor, in which the Prosecutor apologized for Ms. Pollard's action in sending the 9 May message. The Prosecutor stated that the message was sent without the Prosecutor's knowledge or approval, that he strongly disapproved of Ms. Pollard's behaviour, and that he would take steps to ensure that such an occurrence would not be repeated. The Prosecutor also apologized to the Appellant and his counsel and urged the Appeals Chamber to disregard the message. Judge Weinberg de Roca circulated this letter to the persons listed in paragraph 4 above.
6. On 26 May 2004, counsel for the Appellant sent a letter to the Presiding Judge of the Appeals Chamber, taking issue with Ms. Pollard's act of sending the 9 May message, objecting to its contents, and requesting that the Appeals Chamber disregard the message in its entirety. Counsel also stated that the Appellant himself was concerned that the Appeals Chamber's consideration of his appeal might be affected by Ms. Pollard's *ex parte* communication to the Chamber. Counsel requested that the letter be circulated to the persons listed in paragraph 4 above, and the Registry circulated the letter as requested.

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7. The Appeals Chamber hereby notifies the parties that it will completely disregard Ms. Pollard's message and its contents, which are not part of the record in this appeal. The appeal will be decided on the basis of the record, the written submissions filed in the Appeals Chamber, and the oral arguments heard on 21 and 22 April 2004.

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



Theodor Meron
Presiding Judge

Done this 4th day of June 2004,
At The Hague,
The Netherlands.

