

ICTR-98-44-AR15 bis.2
28 SEPTEMBER 2004
(89714 - 89414)

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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

Registrar:

Mr. Adama Dieng

Decision of:

28 September 2004

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Andre RWAMAKUBA

v.

THE PROSECUTOR

Case No. ICTR-98-44-AR15bis.2

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ICTR Appeals Chamber

Date: 28 September 04
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**DECISION ON INTERLOCUTORY APPEALS REGARDING THE
CONTINUATION OF PROCEEDINGS WITH A SUBSTITUTE JUDGE AND
ON NZIRORERA'S MOTION FOR LEAVE TO CONSIDER NEW
MATERIAL**

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *ROSETTE MURGO-MORRISON*

1. The Appeals Chamber of the International Criminal Tribunal for Rwanda ("Tribunal") is seized of appeals filed by Edouard Karemera,¹ Mathieu Ndirumpatse,² Joseph Nzirorera,³ and Andre Rwamakuba⁴ ("Appeals", "Appellants", respectively) against the Decision on Continuation of Trial, rendered on 16 July 2004⁵ ("Impugned Decision") as well as of a Motion for Leave to Consider New Material filed by Joseph Nzirorera on 13 September 2004 ("Nzirorera's Motion").

2. The trial in the present case commenced on 27 November 2003 before a section of Trial Chamber III composed of Judge Vaz, presiding, and *ad litem* Judges Lattanzi and Arrey. On 27 April 2004 Nzirorera requested disqualification of Judge Vaz on the basis of her alleged association with a Prosecution counsel taking part in the case.⁶ The Trial Chamber dismissed this request.⁷ Thereafter, Nzirorera and Rwamakuba moved for Judge Vaz's disqualification from the case before the Bureau of the Tribunal.⁸ Prior to the Bureau's ruling on these motions, Judge Vaz withdrew from the case on 14 May 2004.⁹ On 17 May 2004 the Bureau declared moot the motions for disqualification of Judge Vaz.¹⁰

3. The accused withheld their consent to continue the proceedings with a substitute Judge. Thereafter, on 24 May 2004 the two remaining Judges in the case, Judges Lattanzi and Arrey, rendered a decision to continue the proceedings with a substitute Judge, pursuant to Rule 15bis(D) of the Rules of Procedure and Evidence of the Tribunal ("Rules"). The accused appealed, their principal contention being that, before reaching the decision to continue the trial, the remaining Judges did not give them the opportunity to be heard.¹¹ On 21 June 2004 the Appeals Chamber directed the remaining Judges to reconsider their decision after giving the parties an opportunity to

¹ "Brief on the Continuation of Trial", filed on 26 July 2004 by Edouard Karemera's Defence.

² "Appeal of Ndirumpatse from the Decision of Trial Chamber III 'Decision Relative a la Continuation du Proces' dated July 16, 2004", filed on 2 September 2004 by Mathieu Ndirumpatse's Defence.

³ "Appeal from Second Decision Relative a la Continuation du Proces", filed on 23 July 2004 by Joseph Nzirorera's Defence.

⁴ "Appeal Brought under Rule 15(E) on Behalf of Dr. Andre Rwamakuba Concerning the Continuation of the Trial", filed on 23 July 2004 by Andre Rwamakuba's Defence.

⁵ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Continuation of Trial, 16 July 2004.

⁶ T. 27 April 2004 p. 28.

⁷ T. 27 April 2004 pp. 29-30.

⁸ See Decision on Motions by Nzirorera and Rwamakuba for Disqualification of Judge Vaz, The Bureau, 17 May 2004, p. 2. Further, on 29 March 2004, Karemera lodged an application to disqualify all three Judges on the basis of their lack of impartiality as evidenced by decisions rendered in the case. The Bureau noted that the accused did not allege that it was interest or association of the trial Judges which gave rise to the apprehension of bias and denied the application. Decision on Motion by Karemera for Disqualification of Trial Judges, The Bureau, 17 May 2004. Similarly, on 30 March 2004, Ndirumpatse moved the Bureau for recusal of all three trial Judges on the basis of their partiality as evidenced by decisions rendered in the case. The Bureau denied this application. Decision on Motion by Ndirumpatse for Disqualification of Trial Judges, The Bureau, 17 May 2004.

⁹ See Decision on Motions by Nzirorera and Rwamakuba for Disqualification of Judge Vaz, para. 6.

¹⁰ Decision on Motions by Nzirorera and Rwamakuba for Disqualification of Judge Vaz, p. 3.

¹¹ Decision in the Matter of Proceedings under Rule 15bis(D), 21 June 2004, para. 8.

be heard and taking account of the submissions as to whether it would be in the interests of justice to continue the trial.¹²

4. After receiving submissions from the parties, in the Impugned Decision the remaining Judges unanimously decided that it would be in the interests of justice to continue the trial with a substitute Judge, pursuant to Rule 15*bis*(D) of the Rules. The Appellants brought the present Appeals.

5. In response to the Appeals, on 5 August 2004, the Prosecution filed the "Prosecutor's Consolidated Response to Appeals from *Décision Relative à la Continuation du Procès* of 16 July 2004" ("Prosecutor's Response"), which it supplemented on 13 September 2004.¹³ The Appellants replied to the Prosecutor's Response.¹⁴

6. On 20 September 2004 the Prosecution responded to Nzirorera's Motion¹⁵ and Nzirorera replied on 22 September 2004.¹⁶

7. Due to the urgency of this matter, the Appeals Chamber decides the Appeals and Nzirorera's Motion on the basis of the parties' written submissions with written reasons for the present decision to follow.

8. The Appeals Chamber finds, Judge Schomburg dissenting, that the remaining Judges erred in the exercise of their discretion in reaching the Impugned Decision and, accordingly, **GRANTS** the Appeals and quashes the Impugned Decision to continue the proceedings with a substitute Judge. Consequently, the Appeals Chamber **DECLINES** to consider Nzirorera's Motion as it has been rendered moot by this decision.

¹² Decision in the Matter of Proceedings under Rule 15*bis*(D), 21 June 2004.

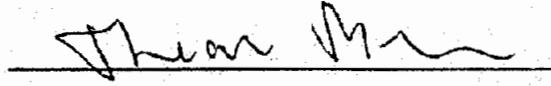
¹³ Supplement to Prosecutor's Consolidated Response to Appeals from *Décision Relative à la Continuation du Procès* of 16 July 2004 in respect of Ngirumpatse's Re-Filed Appeal, 13 September 2004.

¹⁴ "Réplique à « Prosecutor's Consolidated Response to Appeals from *Décision Relative à la continuation du Procès* of 16 July 2004 »", filed by Edouard Karemera on 6 September 2004; "Response of Ngirumpatse to Prosecutor's Consolidated Response to Appeals from *Décision Relative à la Continuation du Procès*", filed by Mathieu Ngirumpatse on 16 August 2004; "Reply to Prosecutor's Consolidated Response", filed by Mathieu Ngirumpatse on 16 September 2004; "Joseph Nzirorera's Reply Brief: Appeal from Second Decision Relative à la Continuation du Procès", filed by Joseph Nzirorera on 12 August 2004; "Reply on Behalf of Rwamakuba to Prosecutor's Consolidated Response to Appeals from *Décision Relative à la Continuation du Procès* of 16 July 2004", filed by Andre Rwamakuba on 11 August 2004.

¹⁵ "Prosecutor's Response to Nzirorera's Motion for Leave to Consider New Material", filed on 20 September 2004 ("Prosecutor's Response to Nzirorera's Motion").

¹⁶ "Motion for Leave to Reply to Prosecutor's Response to Motion for Leave to Consider New Material", filed by Joseph Nzirorera on 22 September 2004. Although Nzirorera's reply is entitled "Motion", it is in substance a reply to the Prosecutor's Response to Nzirorera's Motion and the Appeals Chamber treats it as such. In response, on 23 September 2004, the Prosecution filed the "Prosecutor's Response to Nzirorera's Motion for Leave to Reply to Prosecutor's Response to Motion for Leave to Consider New Material".

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



Theodor Meron
Presiding Judge

Done this 28th day of September 2004,
At The Hague,
The Netherlands.



[Seal of the Tribunal]