

ICTR-98-44-T  
8-12-2004  
(15813-15811)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Dennis C. M., Presiding  
Emile Short  
G. Gustave Kam

**Registrar:** Adama Dieng

**Date:** 8 December 2004

THE PROSECUTOR

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
André RWAMAKUBA

Case No. ICTR-98-44-PT

JUDICIAL RECORDS ARCHIVES  
ICTR  
2004 DEC -8 A 10 23  
[Signature]

DISSENTING OPINION OF JUDGE SHORT ON SEVERANCE OF ANDRÉ RWAMAKUBA  
AND AMENDMENTS OF THE INDICTMENT

*Article 20(4) of the Statute, Rule 82 (B) of the Rules of Procedure and Evidence*

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for Mathieu Ngirumpatse  
Peter Robinson, for Joseph Nzirorera  
David Hooper and Andreas O'Shea, for  
André Rwamakuba

[Signature]

**DISSENTING OPINION OF JUDGE SHORT**

1. I am unable to agree with the majority conclusion that the legal consequence of the Appeals Chamber Decision is that all prior decisions of the Trial Chamber are invalidated and should no longer have effect.

2. It is arguable that since the majority of the Appeals Chamber relied partly on perception of bias to reverse the decision of the Trial Chamber to continue the Trial with a substitute Judge, the same perception taints the entire proceedings conducted by the Trial Chamber and that consequently, all prior decisions of the Trial Chamber, including the Decision of 13 February 2004, should no longer have effect. However, I do not think that it is at all clear that that is the only reasonable inference to be drawn from the Appeals Chamber Decision. Indeed, having regard to the fact that the sole issue for determination by the Appeals Chamber was the validity of the exercise by the two remaining Judges of their discretion under Rules 15bis(D) of the Rules of Procedure and Evidence ("Rules"), I am unable to conclude that it intended its Decision to have the effect of invalidating all prior decisions of the Trial Chamber. In my view, the finding by the Appeals Chamber of the appearance of bias on the part of the Judges should only be considered in the context of the exercise by the remaining Judges of their discretion under Rules 15bis(D) of the Rules.

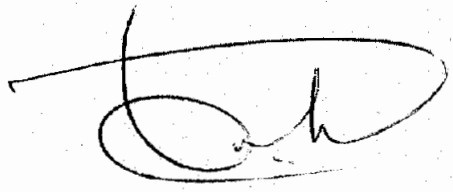
3. This view seems to be supported by the Appeals Chamber's pronouncements in paragraph 71 of the Decision on the status of its decisions on Rwamakuba's interlocutory appeal concerning joint criminal enterprise as well as the interlocutory appeals filed by Ngirumpatse and Nzirorera.

4. Moreover, I find it difficult to understand how, if this was the intended effect of the Appeals Chamber decision, Judge Shahabuddeen could have supported the majority Judgment and at the same time make a Declaration stating:

I support today's decision only on two grounds. These are, first, the evaluation problem, referred to in paragraph 58 of the decision, and, second, the language problem referred to in paragraphs 59 and 60 of the decision. I do not consider it necessary to make a finding as to whether an appearance of bias attached to Judge Vaz, and I do not find that there was any such appearance in the case of the two remaining Judges.

5. It seems clear from Judge Shahabuddeen's position that he understood the Appeals Chamber Decision, for which he expressed support, to mean that the only issue the Appeals Chamber was deciding was the propriety of the decision of the two remaining Judges to proceed with the trial with a substitute Judge. He could not have understood the Decision to have the legal consequence of invalidating all prior Decisions taken by the Trial Chamber and at the same time make the said Declaration.

Arusha, 8 December 2004, done in English.



Emile Short



[Seal of the Tribunal]