



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

3049/H

ICTR-98-42-A  
02<sup>nd</sup> October 2012  
{3049/H - 3041/H}

**IN THE APPEALS CHAMBER**

Before: Judge Theodor Meron, Presiding  
Acting Registrar: Mr. Pascal Besnier  
Decision of: 2 October 2012

ICTR Appeals Chamber

Date: 2<sup>nd</sup> October 2012  
Action: K. Juvoh  
Copied To: Concerned

Judges Parties, LD,  
JPU, LSS, Deface  
[Signature]

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO  
Arsène Shalom NTAHOBALI  
Sylvain NSABIMANA  
Alphonse NTEZIRYAYO  
Joseph KANYABASHI  
Élie NDAYAMBAJE

Case No. ICTR-98-42-A

**DECISION ON MOTION FOR DISQUALIFICATION OF  
JUDGE FAUSTO POCAR**

**Counsel for Pauline Nyiramasuhuko**

Nicole Bergevin and Guy Poupard

**Counsel for Arsène Shalom Ntahobali**

Normand Marquis

**Counsel for Sylvain Nsabimana**

Josette Kadji and Pierre Tientcheu Weledji

**Counsel for Alphonse Nteziyayo**

Titinga Frédéric Pacere and  
Gershon Otachi Bw'Omanwa

**Counsel for Joseph Kanyabashi**

Michel Marchand and Alexandra Marcil

**Counsel for Élie Ndayambaje**

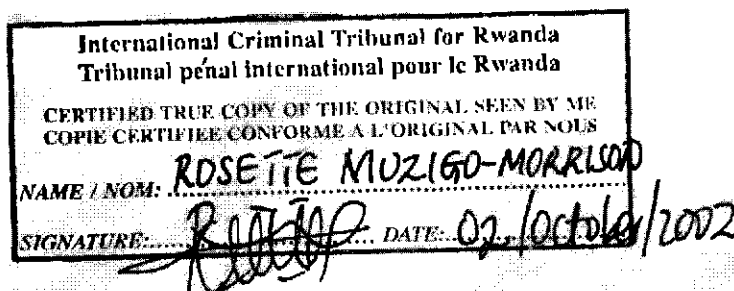
Pierre Boulé and Claver Sindayigaya

**Office of the Prosecutor**

Hassan Bubacar Jallow

James Arguin

Deborah Wilkinson



1. I, Theodor Meron, Presiding Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively), am seised of a motion for the disqualification of Judge Fausto Pocar from this case filed confidentially by Élie Ndayambaje ("Applicant") on 27 August 2012.<sup>1</sup>

#### A. Background

2. On 24 June 2011, Trial Chamber II of the Tribunal ("Trial Chamber") convicted the Applicant of genocide, direct and public incitement to commit genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II based on the killings of Tutsis perpetrated at Mugombwa Church on 20 and 21 April 1994, at Kabuye Hill from 22 through 24 April 1994, and after his swearing-in ceremony as a new *bourgmestre* on 22 June 1994, as well as based on the statements he made at Mugombwa Church and at his swearing-in ceremony.<sup>2</sup> The Trial Chamber sentenced the Applicant to life imprisonment.<sup>3</sup> The Applicant lodged an appeal against his convictions and sentence on 17 October 2011.<sup>4</sup>

3. On 15 July 2011, the then Presiding Judge of the Appeals Chamber, Judge Patrick Robinson, assigned Judges Fausto Pocar, Liu Daqun, Andrésia Vaz, Carmel Agius, and myself to the bench of the appeal proceedings in this case.<sup>5</sup> On 17 November 2011, I issued, in my capacity as Presiding Judge of the Appeals Chamber, an order assigning Judge Patrick Robinson to replace me on this bench.<sup>6</sup> On 11 July 2012, I issued a new order assigning Judge Bakhtiyar Tuzmukhamedov to replace Judge Liu Daqun on this bench.<sup>7</sup>

4. The Motion seeks the disqualification of Judge Pocar from the appeal proceedings in this case on the basis of his alleged lack of impartiality and the alleged appearance of bias resulting

<sup>1</sup> *Requête de l'Appelant Élie Ndayambaje demandant la récusation du Juge Fausto Pocar*, confidential, 27 August 2012 ("Motion").

<sup>2</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Judgement and Sentence, pronounced on 24 June 2011, issued in writing on 14 July 2011 ("Trial Judgement"), paras. 5976, 5977, 6038, 6064, 6066, 6107, 6108, 6175, 6176, 6186.

<sup>3</sup> Trial Judgement, para. 6271.

<sup>4</sup> Notice of Appeal, originally filed in French on 17 October 2011, English translation filed on 8 December 2011. See also Corrigendum to Élie Ndayambaje's Notice of Appeal, originally filed in French on 4 January 2012, English translation filed on 13 February 2012 ("Ndayambaje Notice of Appeal").

<sup>5</sup> Order Assigning Judges to a Case Before the Appeals Chamber, 15 July 2011.

<sup>6</sup> Order Replacing a Judge in a Case Before the Appeals Chamber, 17 November 2011. See also Corrigendum to Order Replacing a Judge in a Case Before the Appeals Chamber, 21 November 2011.

<sup>7</sup> Order Replacing a Judge in a Case Before the Appeals Chamber, 11 July 2012.

from certain views he expressed as a Judge in the appeal proceedings in the case of *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A (“*Kalimanzira case*”).<sup>8</sup> The Prosecution responded on 6 September 2012 that the Motion should be denied.<sup>9</sup> The Applicant filed a reply on 11 September 2012.<sup>10</sup>

## B. Applicable Law

5. Rule 15(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that:

A Judge may not sit in any case in which he has a personal interest or concerning which he has or has had any association which might affect his impartiality. He shall in any such circumstance withdraw from that case. Where the Judge withdraws from the Trial Chamber, the President shall assign another Trial Chamber Judge to sit in his place. Where the Judge withdraws from the Appeals Chamber, the Presiding Judge of that Chamber shall assign another Judge to sit in his place.

6. The Appeals Chamber has held that:

A. A Judge is not impartial if it is shown that actual bias exists.

B. There is an unacceptable appearance of bias if:

(i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge’s decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge’s disqualification from the case is automatic; or

(ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.<sup>11</sup>

7. With respect to the reasonable observer prong of this test, the Appeals Chamber has held that the “reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to uphold.”<sup>12</sup>

8. The Appeals Chamber has also emphasized that there is a presumption of impartiality that attaches to any Judge of the Tribunal.<sup>13</sup> Accordingly, the party who seeks the disqualification of a

<sup>8</sup> Motion, paras. 7, 8, 19, 24-39, p. 9. The appeal judgement in the *Kalimanzira* case was rendered on 20 October 2010. See *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010 (“*Kalimanzira Appeal Judgement*”).

<sup>9</sup> Prosecution Response to Ndayambaje’s Request for Disqualification of Judge Pocar, confidential, 6 September 2012 (“Response”). See also Corrigendum to Prosecution Response to Ndayambaje’s Request for Disqualification of Judge Pocar, 7 September 2012.

<sup>10</sup> *Réplique de l’Appelant Élie Ndayambaje à la Réponse du Procureur à la Requête demandant la récusation du Juge Fausto Pocar*, confidential, 11 September 2012 (“Reply”).

<sup>11</sup> See, e.g., *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52B-R, Decision on Request for Disqualification of Judge Pocar, 6 June 2012 (“*Nahimana Decision*”), para. 7, fn. 9, and references contained therein.

<sup>12</sup> See *Nahimana Decision*, para. 8, fn. 10, and references contained therein.

<sup>13</sup> See *Nahimana Decision*, para. 9, fn. 11, and references contained therein.

Judge bears the burden of adducing sufficient evidence that the Judge is not impartial.<sup>14</sup> In this respect, the Appeals Chamber has consistently held that there is a high threshold to reach to rebut the presumption of impartiality.<sup>15</sup> The party must demonstrate “a reasonable apprehension of bias by reason of prejudgement” that is “firmly established”.<sup>16</sup> The Appeals Chamber has explained that this high threshold is required because “it would be as much of a potential threat to the interests of the impartial and fair administration of justice if judges were to disqualify themselves on the basis of unfounded and unsupported allegations of apparent bias”.<sup>17</sup>

9. Furthermore, Rule 15(B) of the Rules provides that:

Any party may apply to the Presiding Judge of a Chamber for the disqualification of a Judge of that Chamber from a case upon the above grounds. After the Presiding Judge has conferred with the Judge in question, the Bureau, if necessary, shall determine the matter. If the Bureau upholds the application, the President shall assign another Judge to sit in place of the disqualified Judge.

### C. Submissions

10. The Applicant submits that Judge Pocar has already expressed his position regarding the Applicant’s guilt in relation to the 22 June 1994 swearing-in ceremony in Judge Pocar’s Dissenting Opinion appended to the *Kalimanzira* Appeal Judgement.<sup>18</sup> Specifically, the Applicant contends that Judge Pocar concluded that Callixte Kalimanzira was guilty of aiding and abetting the killings of Tutsis that occurred following the ceremony based on the premise that Mr. Kalimanzira approved the Applicant’s call to kill Tutsis during the ceremony and that the killings occurred as a result of the ceremony.<sup>19</sup> The Applicant is of the view that, in so doing, Judge Pocar clearly expressed his belief that the Applicant called for the killing of Tutsis during the swearing-in ceremony and that killings occurred as a result.<sup>20</sup> In support of this contention, the Applicant argues that: (i) the *Kalimanzira* Trial Chamber had not reached any particular conclusion on the nature of the comments the Applicant allegedly made during the ceremony;<sup>21</sup> and (ii) Judge Pocar did not discuss the reasonableness of the *Kalimanzira* Trial Chamber’s

<sup>14</sup> See *Nahimana* Decision, para. 9, fn. 12, and references contained therein.

<sup>15</sup> See *Nahimana* Decision, para. 9, fn. 13, and references contained therein.

<sup>16</sup> See *Nahimana* Decision, para. 9, fn. 14, and references contained therein.

<sup>17</sup> See *Nahimana* Decision, para. 9, fn. 15, and references contained therein.

<sup>18</sup> Motion, paras. 7, 19, 24, 27, 37, referring to *Kalimanzira* Appeal Judgement, Partially Dissenting and Separate Opinions of Judge Pocar (“Dissenting Opinion”). See also Reply, paras. 7, 13.

<sup>19</sup> Motion, paras. 24, 29, referring to Dissenting Opinion, paras. 9, 12.

<sup>20</sup> Motion, paras. 28, 34-36. See also Reply, para. 15.

<sup>21</sup> Motion, para. 22, referring to *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Judgement, 22 June 2009 (“*Kalimanzira* Trial Judgement”), para. 291.

conclusions but instead reviewed and re-assessed the evidence in the record before expressing his own position on Mr. Kalimanzira's guilt, as is apparent from the language he used.<sup>22</sup>

11. According to the Applicant, it is therefore "manifestly implausible"<sup>23</sup> and "logically impossible"<sup>24</sup> for Judge Pocar to conclude in the case at hand that a call to kill Tutsis was not made and that no killings resulted from the swearing-in ceremony because Judge Pocar stated the opposite in the *Kalimanzira* case.<sup>25</sup> The Applicant submits that, in these circumstances, Judge Pocar's impartiality as well as the appearance of impartiality are objectively compromised.<sup>26</sup> He contends that maintaining Judge Pocar on the bench in this case, in particular as Presiding Judge, would accordingly violate Articles 20(2) and 20(3) of the Statute of the Tribunal.<sup>27</sup> Finally, the Applicant requests that, in the interest of transparency, Judge Pocar be invited to provide his observations on the Motion in writing.<sup>28</sup>

12. The Prosecution responds that the Applicant has failed to discharge his burden of rebutting the presumption of impartiality that attaches to a Judge and of demonstrating that Judge Pocar's Dissenting Opinion establishes a reasonable apprehension of bias by reason of prejudgement.<sup>29</sup> The Prosecution contends that "[t]he language in that dissent is not evidence of either actual or apparent bias, and it is not a pronouncement on [the Applicant's] culpability."<sup>30</sup> Accordingly, the Prosecution submits that the Motion should be denied.<sup>31</sup>

13. In his Reply, the Applicant reiterates that the language used and views expressed in the Dissenting Opinion are objective signs of an appearance of impartiality in the present case.<sup>32</sup>

<sup>22</sup> Motion, paras. 25, 26, 34, referring to Dissenting Opinion, paras. 9 ("Élie Ndayambaje's call to kill Tutsis"), 12 ("I am convinced that killings of Tutsis occurred [...] as a result of the ceremony") (internal quotation marks omitted). See also Reply, paras. 11, 12.

<sup>23</sup> Motion, para. 30 (unofficial translation).

<sup>24</sup> Motion, para. 36 (unofficial translation).

<sup>25</sup> Motion, paras. 28, 36. See also *ibid.*, para. 20. The Applicant also submits that Judge Pocar already expressed his opinion on the credibility of one of the witnesses whose credibility is challenged by the Applicant in the present case. See *ibid.*, para. 33. See also Reply, paras. 14, 17.

<sup>26</sup> Motion, paras. 19, 39. See also *ibid.*, paras. 30, 31, 38; Reply, paras. 7, 10.

<sup>27</sup> Motion, paras. 37-39.

<sup>28</sup> Motion, para. 18, p. 8. See also Reply, para. 5.

<sup>29</sup> Response, paras. 2, 10.

<sup>30</sup> Response, para. 2. See also *ibid.*, paras. 5-7.

<sup>31</sup> Response, paras. 2, 10.

<sup>32</sup> Reply, paras. 11, 12.

**D. Discussion**

14. On 26 September 2012, pursuant to Rule 15(B) of the Rules, I conferred with Judge Pocar regarding the Motion. Judge Pocar considers that there is no merit in the request for his disqualification from the present case. In Judge Pocar's view, at no point in his Dissenting Opinion in the *Kalimanzira* case did he express a position on the guilt of the Applicant or make statements that may suggest that he might not bring an impartial and unprejudiced mind to the issues arising in the present case. Rather, Judge Pocar considers that, as reflected in the Dissenting Opinion, he was only concerned with determining the reasonableness of the *Kalimanzira* Trial Chamber's factual findings regarding the guilt of Mr. Kalimanzira. In this respect, Judge Pocar noted the difference between the functions of a Judge in a trial chamber who makes findings beyond reasonable doubt and those of a Judge in the Appeals Chamber who assesses whether a reasonable trial chamber could have made a certain finding. Judge Pocar underscored that, as with any professional judge, he will approach the present case without any preconceived position and will rely solely and exclusively on the evidence adduced in this case. Having conveyed Judge Pocar's views with regard to the Motion, I dismiss the Applicant's request to invite Judge Pocar to provide his observations in writing as moot.

15. As evidence of bias or an appearance of bias, the Applicant points to paragraphs 9 and 12 of Judge Pocar's Dissenting Opinion, wherein, he contends, Judge Pocar expressed his belief that the Applicant called for the killing of Tutsis during the 22 June 1994 swearing-in ceremony and that killings occurred as a result. I recall that "Judges may be subject to disqualification if they make a ruling on the ultimate issue of an individual's culpability in a connected prosecution."<sup>33</sup> I observe, however, that in paragraph 9 of his Dissenting Opinion, Judge Pocar did not express any particular position but merely stated that "Kalimanzira was charged and convicted for aiding and abetting genocide in offering moral support to [the Applicant's] call to kill Tutsis during the ceremony." I note in this regard that, contrary to the Applicant's suggestion, the *Kalimanzira* Trial Chamber accepted Prosecution evidence that the Applicant made remarks during his speech which were understood as a call to kill Tutsis,<sup>34</sup> and ultimately found that "Kalimanzira's presence during [the Applicant's] speech lent moral support to [the Applicant's] instigation of genocide."<sup>35</sup> I therefore consider that paragraph 9 of the Dissenting Opinion simply recalls the findings of the *Kalimanzira* Trial Chamber and does not reflect any bias or give rise to an appearance of bias, much less suggest any view by Judge Pocar as to the ultimate issue of the Applicant's culpability.

<sup>33</sup> *Prosecutor v. Stanislav Galic*, Case No. IT-98-29-T, Decision on Galic's Application Pursuant to Rule 15(B), 28 March 2003, para. 16.

<sup>34</sup> See *Kalimanzira* Trial Judgement, paras. 281, 283, 291-293.

<sup>35</sup> *Kalimanzira* Trial Judgement, para. 292.

16. Turning to paragraph 12 of the Dissenting Opinion, I note that Judge Pocar stated in this paragraph that he is “convinced that killings of Tutsis occurred following Élie Ndayambaje’s inauguration ceremony”.<sup>36</sup> When read in isolation, this statement could give rise to an appearance of bias insofar as it may suggest that Judge Pocar may have already reached his own conclusion on the issue of whether killings of Tutsis occurred following the Applicant’s swearing-in ceremony, an issue that is on appeal in the present case.<sup>37</sup> I recall, however, that where allegations of bias are raised in relation to a Judge’s statements, it is necessary to situate the Judge’s remarks in their proper context.<sup>38</sup> Indeed, the consideration of impugned remarks in their proper context “is the approach to be expected of a reasonable observer.”<sup>39</sup>

17. Having carefully considered Judge Pocar’s statement in its proper context, I find that it does not reflect any prejudgement of the issue of whether killings of Tutsis occurred following the Applicant’s swearing-in ceremony, nor does it suggest that Judge Pocar reviewed and re-assessed the evidence on the record before reaching his own conclusion as to Mr. Kalimanzira’s guilt, as the Applicant claims. Rather, it reflects Judge Pocar’s views on the reasonableness of the *Kalimanzira* Trial Chamber’s factual finding on this issue, and his resulting divergence from the view of the majority of the Appeals Chamber.<sup>40</sup> Indeed, I observe that in paragraph 12 of the Dissenting Opinion Judge Pocar repeatedly highlighted that his conclusions were based on the deferential standard of review applicable where factual findings are being challenged on appeal:

Thus, I consider that *Kalimanzira* has not demonstrated that a reasonable Trial Chamber could not have concluded beyond reasonable doubt that killings followed the inauguration of Élie Ndayambaje as a new bourgmestre. Having found no error in the Trial Chamber’s approach and in its assessment of the evidence of Witnesses BBB and BCA, I am convinced that killings of Tutsis occurred following Élie Ndayambaje’s inauguration ceremony as a new bourgmestre. Given our deferential standard of review on appeal, I find the Majority unreasonable in concluding that “[n]o reasonable trier of fact could have concluded that Tutsis were killed as a result of the ceremony”.<sup>41</sup>

A consideration of this paragraph in the context of Judge Pocar’s Dissenting Opinion as a whole only serves to further underscore that Judge Pocar’s primary focus was on the importance of

<sup>36</sup> Dissenting Opinion, para. 12.

<sup>37</sup> Ndayambaje Notice of Appeal, paras. 154-164.

<sup>38</sup> *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement, originally filed in French on 26 May 2003, English translation filed on 9 February 2004 (“*Rutaganda* Appeal Judgement”), para. 51.

<sup>39</sup> *Rutaganda* Appeal Judgement, para. 51. See also *ibid.*, para. 47 (“[I]t is proper to apply to the instant case the same approach adopted in *Akayesu*, namely, placing the cases of allegation of bias identified by the Appellant in their proper context [...] so that the intent of the persons who made the impugned remarks may be understood, and examining them in the light of the test of a reasonable observer.”) (internal reference omitted).

<sup>40</sup> Dissenting Opinion, para. 12. See also *ibid.*, paras. 10, 11.

<sup>41</sup> Dissenting Opinion, para. 12 (internal reference omitted, emphasis added).

according deference to the *Kalimanzira* Trial Chamber's assessment of the evidence and strictly abiding by the standard of appellate review.<sup>42</sup>

18. I recall that, in accordance with the applicable standard of appellate review, the Appeals Chamber must give deference to the trial chamber that received the evidence at trial and that it will only interfere in findings of fact where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.<sup>43</sup> I also recall that the standard by which a Judge of the Appeals Chamber assesses the reasonableness of a trial chamber's factual finding is different from the standard of proof beyond reasonable doubt by which trial chambers are required to enter their findings.<sup>44</sup> In light of these principles and in view of the foregoing, I am satisfied that, when considered in context, Judge Pocar's statement that he is "convinced" that killings of Tutsis occurred following the swearing-in ceremony may not reasonably be perceived as a ruling on the ultimate issue of the Applicant's culpability or raise a reasonable apprehension of bias against the Applicant.

19. As for the Applicant's claim that the conclusions reached in the Dissenting Opinion in the *Kalimanzira* case otherwise make it implausible or impossible for Judge Pocar to reach contrary conclusions in the present case and thus demonstrate bias or an appearance of bias, I recall that Judges of this Tribunal are sometimes involved in cases which, by their very nature, cover overlapping issues.<sup>45</sup> It is assumed, in the absence of evidence to the contrary, that, by virtue of their training and experience, Judges will rule fairly on the issues before them, relying solely and exclusively on the evidence adduced in the particular case.<sup>46</sup> As emphasized in a case before the International Criminal Tribunal for the former Yugoslavia:

There may be many situations in which previous decisions of a judicial officer on issues of fact and law may generate an expectation that he is likely to decide issues in a particular case adversely to one of the parties. But this does not mean either that he will approach the issues in that case otherwise than with an impartial and unprejudiced mind in the sense in which that expression is used in the authorities or that his previous decisions provide an acceptable basis for inferring that there is a reasonable apprehension that he will approach the issues in this way. In cases of this kind, disqualification is only made out by showing that there is a reasonable apprehension of bias by reason of prejudgment and this must be "firmly established" [...]. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of

<sup>42</sup> See, e.g., Dissenting Opinion, paras. 2-5.

<sup>43</sup> See, e.g., *Kalimanzira* Appeal Judgement, para. 9, fn. 18, and references contained therein.

<sup>44</sup> See *Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Motion for Disqualification of Judges, 8 February 2011 ("*Ntawukulilyayo* Decision"), para. 17.

<sup>45</sup> See, e.g., *Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-A, Decision on Gaspard Kanyarukiga's Motion to Disqualify Judge Vaz, 24 February 2011 ("*Kanyarukiga* Decision"), para. 16; *Ntawukulilyayo* Decision, para. 12; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009 ("*Karera* Appeal Judgement"), para. 378.

<sup>46</sup> See, e.g., *Kanyarukiga* Decision, para. 16; *Ntawukulilyayo* Decision, para. 12; *Karera* Appeal Judgement, para. 378; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 78.



appearance of bias, encourage parties to believe that, by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.<sup>47</sup>

20. I consider that the fact that a Judge of the Appeals Chamber has previously assessed the propriety of a trial chamber's assessment of the evidence in relation to a particular series of events is not a sufficient basis, in and of itself, to require his disqualification from hearing an appeal involving factual findings made on the same series of events by a different trial chamber in a different case.<sup>48</sup> A reasonable, informed observer would know that, when hearing an appeal, Judges assess findings without any preconceived position and strictly within the context of the case in which such findings were made, not on the basis of extraneous information.<sup>49</sup>

21. I therefore consider that the Applicant has not rebutted Judge Pocar's presumption of impartiality by showing actual bias or a reasonable apprehension of bias arising from Judge Pocar's Dissenting Opinion in the *Kalimanzira* case. Accordingly, I consider that the Motion is without merit.

#### E. Disposition

22. For the foregoing reasons, and pursuant to Rule 15 of the Rules, I hereby **DENY** the Motion.

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

Done this 2nd day of October 2012,  
At The Hague,  
The Netherlands.



Judge Theodor Meron  
Presiding Judge

[Seal of the Tribunal]



<sup>47</sup> *Prosecutor v. Radoslav Brdanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Application by Momir Talić for the Disqualification and Withdrawal of a Judge, 18 May 2000, para. 18, citing the opinion of Mason J of the High Court of Australia, *Re JRL; Ex parte CJL* (1986) 161 CLR 342 at 352.

<sup>48</sup> See *Kanyarukiga* Decision, para. 17; *Ntawukullyayo* Decision, para. 13; *Karera* Appeal Judgement, para. 378. On this basis, I reject the Applicant's undeveloped submission that Judge Pocar previously considered the credibility of one of the witnesses whose credibility is being challenged by the Applicant in this case.

<sup>49</sup> See *Kanyarukiga* Decision, para. 17.