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Litem Judges - ICTR



IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding

Judge Mohamed Shahabuddeen

Judge Florence Mumba

Judge Mehmet Güney

Judge Inés Mónica Weinberg de Roca

Registrar: Mr. Adama Dieng

Decision of: 11 June 2004

Edouard KAREMERA

Joseph NZIRORERA

v.

THE PROSECUTOR

Case No ICTR-98-44-AR73.4

DECISION ON INTERLOCUTORY APPEALS REGARDING PARTICIPATION OF *AD LITEM* JUDGES

Counsel for the Prosecution

Mr. Hassan Bubacar Jallow

Ms. Melanie Werrett

Mr. James Stewart

Counsel for the Defence

Mr. Peter Robinson

Ms. Dior Diagne Mbaye

Mr. Félix Sow

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 1994 and 31 December 1994 ("Appeals Chamber" and "International Tribunal" respectively),

BEING SEISED OF the "Appeal of *décision relative aux requêtes de Karemera et Nzirorera aux fins d'invalidation de l'acte d'accusation pour vices de procédure et de forme*," filed by counsel for Joseph Nzirorera on 13 April 2004 and the "*Appel de la défense d'Edouard Karemera contre la décision de la Chambre de 1ère Instance III du 29 mars 2004 relative aux requêtes de Karemera et Nzirorera aux fins d'invalidation de l'acte d'accusation pour vices de procédure et de forme*," filed by counsel for Edouard Karemera on 14 April 2004 ("Appeals" and "Appellants" respectively), in which the Appellants submit *inter alia* that:

the Impugned Decision should be reversed and the indictment dismissed because a decision authorising an amendment to an indictment is a review of the indictment within the meaning of Article 18 of the Statute of the International Tribunal and cannot therefore be undertaken by *ad*

litem judges pursuant to Article 12 *quater* of the Statute of the International Tribunal,

and that the Appeals Chamber should reverse the imposition of sanctions against counsel for Nzirorera, which were imposed by the Trial Chamber pursuant to Rule 73(F) of the Rules;

NOTING the "Order of the Presiding Judge to Assign Judges" rendered on 16 April 2004 which states that both Appeals arise out of the same decision of the Trial Chamber and that judicial economy warrants that they be considered by the same Judges of the Appeals Chamber and orders therefore that the two Appeals be treated as a single case;

NOTING the "*Décision relative aux requêtes de Karemera et Nzirorera aux fins d'invalidation de l'acte d'accusation pour vices de procédure et de forme- Article 50 du Règlement de procédure et de preuve*" ("Impugned Decision") rendered by the Trial Chamber in this case on 29 March 2004, which dismisses the motion filed by the Appellants on the grounds that the Trial Chamber did not conduct a confirmation of the indictment but was only seised of the issue whether the indictment could be amended pursuant to Rule 50(A) of the Rules of Procedure and Evidence ("Rules");

NOTING that the Trial Chamber granted certification orally on 7 April 2004 for the Appellants to pursue their Appeals in respect only of the question whether *ad litem* judges can participate in motions dealing with amendment of the indictment during trial;

NOTING the "Prosecutor's Consolidated Response to Karemera and Nzirorera's Appeals of *Décision Relative aux Requêtes de Karemera aux Fins d'Invalidation de l'Acte d'Accusation pour Vices de Procédure et de Forme*" ("Prosecution Response") filed on 27 April 2004, in which the Prosecution submits *inter alia* that the Appeals should be dismissed because:

the amendment of an indictment is distinguishable from the confirmation of it, the latter being undertaken by a single judge whereas the former can only be done by a Trial Chamber,

Article 12 *quater* empowers an *ad litem* judge to participate in the granting of leave to amend an indictment, as it gives to *ad litem* judges the same powers that it gives to permanent judges, subject to one exception, namely the confirmation of indictments,

it would defeat the purpose and object of Article 12 of the Statute of the International Tribunal to prevent *ad litem* judges from deciding an important motion during the trial,

the request for reversal of sanctions imposed on counsel for Nzirorera should not be considered, as this request is unsupported by any authority and is already the subject of a pending appeal;

NOTING the "Reply Brief: Appeal of *décision relative aux requêtes de Karemera et Nzirorera aux fins d'invalidation de l'acte d'accusation pour vices de procédure et de forme*" filed on 29 April 2004 by the Appellant Nzirorera, in which he submits *inter*

alia that the placement of Rule 50 of the Rules supports the conclusion that amended indictments are subject to the same "review" as initial indictments, that *ad litem* judges are therefore not authorised to conduct this review and that, contrary to the Prosecution's Response, certification to appeal the issue of sanctions was not denied by the Trial Chamber, nor are these sanctions the subject of any separate appeal;

CONSIDERING that, pursuant to Article 12 *quater* of the Statute of the International Tribunal, *ad litem* judges enjoy the same powers as the permanent judges of the International Tribunal, with the exception of the right to review an indictment, the right to adjudicate in pre-trial proceedings and other administrative matters specifically enumerated in paragraph 2 of Article 12 *quater* of the Statute of the International Tribunal;

CONSIDERING that, pursuant to Article 18 of the Statute of the International Tribunal, the review and confirmation of an indictment are carried out by a single judge whereas, pursuant to Rule 50 of the Rules, at or after the initial appearance of the accused, leave to amend an indictment can only be granted by a Trial Chamber;

FINDING that *ad litem* judges, sitting as members of a Trial Chamber, are empowered to participate in the consideration and decision of a motion for leave to amend an indictment pursuant to Rule 50 of the Rules, and that it is independent of the question whether, in deciding to grant leave to amend an indictment, the Trial Chamber should apply the standards set out in Sub-Rules 47(E) and (F) of the Rules;

FINDING that the Trial Chamber did not err in holding to the above effect;

CONSIDERING also that, although Trial Chambers should use the power to impose sanctions cautiously, a decision to impose monetary sanctions on counsel for frivolous motions or abuse of process pursuant to Rule 73(F) of the Rules is not subject to appeal under the Statute of the International Tribunal or the Rules and that, in any event, the certification granted by the Trial Chamber in this case does not cover an appeal from the decision to impose such sanctions;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Appeals.

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

Theodor Meron

Presiding Judge

Done this 11th day of June 2004,

At The Hague,

The Netherlands.

[Seal of the International Tribunal]