ICTR-01-66-AR
22 May 2006
(114/H - 111/H)

114/H
RMM

Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

UNITED NATIONS
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IN THE APPEALS CHAMBER

Before: **Judge Fausto Pocar, Presiding**
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Theodor Meron

Registrar: **Mr. Adama Dieng**

Decision of: **22 May 2006**

ICTR Appeals Chamber
Date: 22 May 2006
Action: RMM
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2006 MAY 23 P 3:20
ICTR ARCHIVES

THE PROSECUTOR

v.

Athanase SEROMBA

Case No. ICTR-01-66-AR

Decision on Interlocutory Appeal of a Bureau Decision

Office of the Prosecutor:

Ms. Silvana Arbia
Mr. Jonathan Moses
Mr. Gregory Townsend
Ms. Althea Alexis-Windsor

Counsel for the Defence:

Mr. Patrice Monthé
Mr. Barnabé Nekuie

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSETTE MUZIGA-MORRISON
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113/H

1. 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 Serious Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of an interlocutory appeal filed by Athanase Seromba[1] against a decision of the Bureau of 25 April 2006, denying his request, pursuant to Rule 15 of the Tribunal's Rules of Procedure and Evidence ("Rules"), to disqualify the Trial Judges in his case for lack of impartiality.[2]

Background

2. On 24 April 2006, Mr. Seromba filed a request with the Tribunal's Bureau to disqualify the Trial Judges in his case.[3] He argued that the Judges had a "personal interest" in convicting him, as illustrated by several decisions rendered during the course of the trial which, in his view, were erroneous or resulted in an inequitable treatment between Prosecution and Defence witnesses.[4] The Bureau denied Mr. Seromba's request on 25 April 2006, after examining each instance allegedly reflecting a lack of impartiality.[5] On appeal, Mr. Seromba argues that the Bureau erred in law in according the Trial Judges a presumption of impartiality and points to the instances allegedly reflecting the Trial Chamber's bias.[6]

3. In its response, the Prosecution disputes the admissibility of this appeal, arguing that no right of appeal to the Appeals Chamber exists from a decision taken by the Bureau.[7] Mr. Seromba argues, however, that his appeal is admissible because the Bureau's decision has all the characteristics of a judicial decision.[8] He emphasizes the importance of the right of appeal, particularly in matters related to the impartiality of Judges.[9] He contends that Rule 15 does not

[1] *The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-AR, *Requête d'appel de la Défense contre la décision du Bureau du Tribunal rendue le 25 avril 2006 relative à la récusation des Juges Vaz, Kam et Hökborg*, filed 26 April 2006 ("Seromba Appeal"). The Prosecution responded in *The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-AR, Prosecutor's Response to Seromba's Appeal of the Decision of 26 April 2006 of the ICTR Bureau, filed 27 April 2006 ("Prosecution Response"). Mr. Seromba filed his reply in *The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-AR, *Mémoire complémentaire de la Défense, contenant réplique à la reponse du Procureur sur l'appel interjeté contre la décision du bureau en date du 25 avril 2006*, filed 2 May 2006 ("Seromba Reply") and *Bordereau de pièces jointes au Mémoire complémentaire de la Défense du père Seromba*, filed 8 May 2006. The Appeals Chamber has disregarded the Prosecution's additional filing of 3 May 2006, entitled Prosecution's Supplementary Response to Seromba's Appeal of the Decision of 26 April of the ICTR Bureau. There is no right of sur-reply, and the submission is unnecessary to the disposition of the appeal.

[2] *The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-T, Decision on Motion for Disqualification of Judges, 25 April 2006 ("Impugned Decision").

[3] Impugned Decision, para. 4.

[4] *See generally* Impugned Decision, paras. 5, 10, 13, 15-20.

[5] Impugned Decision, para. 22.

[6] Seromba Appeal, pp. 2-13.

[7] Prosecution Response, paras. 10-18.

[8] Seromba Appeal, p. 2; Seromba Reply, para. 9.

[9] Seromba Reply, paras. 9, 15-21.

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expressly preclude appeal and, in any event, does not envision the Bureau's consideration to be both of first and last resort.[10] In Mr. Seromba's view, the Statute envisions the Appeals Chamber as the only body competent to consider an issue in the final instance.[11] He asks the Appeals Chamber to read Rule 15 broadly, as it has in construing the grounds of disqualification under the Rule, in order to admit his appeal.[12]

Discussion

4. The Statute and Rules of the Tribunal do not provide for an interlocutory appeal to the Appeals Chamber of a decision taken by the Bureau pursuant to Rule 15(B).[13] Rather, the Appeals Chamber's consideration of whether a Trial Judge should have been disqualified is limited to an appeal against a conviction or where the issue properly arises in an interlocutory appeal certified by a Trial Chamber.[14]

5. Rule 15(B) envisions a specific two-stage process of consideration for a request to disqualify a Judge. As the Rule clearly states, an application for disqualification is to be made to the Presiding Judge of the Chamber seized of the proceedings, which in this case is Judge Khan, the Presiding Judge of Trial Chamber III.[15] The Presiding Judge is then to confer with the Judge in question. If the party disputes the Presiding Judge's decision, the Bureau shall determine the matter in a *de novo* review.[16]

6. The Appeals Chamber observes that Mr. Seromba did not follow this procedure and filed his claim directly with the Bureau,[17] thereby depriving himself of the review procedure envisioned by the Rule. Although it would have been within the discretion of the Bureau to dismiss Mr.

[10] Seromba Appeal, p. 2; Seromba Reply, para. 9.
[11] Seromba Reply, para. 9.
[12] Seromba Reply, paras. 10-14.
[13] *See generally The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR54, Decision on Appeal from Refusal of Application for Disqualification and Withdrawal of Judge, 13 March 2003, para. 8 ("*Galić* Appeals Chamber Decision"); *The Prosecutor v. Vidoje Blagojević et al.*, Case No. IT-02-60, Decision on Blagojević's Motion for Clarification, 27 March 2003, para. 4 (ICTY Bureau) ("*Blagojević* Decision").
[14] *See Galić* Appeals Chamber Decision, para. 8; *Blagojević* Decision, paras. 4, 5. For example, the Appeals Chamber has considered the impartiality of Trial Judges in *Laurent Semanza v. The Prosecutor*, Case No. ICTR 97-20-A, Judgement, 20 May 2005, paras. 12-58; *The Prosecutor v. Edouard Karemera et al.*, Case No. 98-44-AR15*bis*.2, Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material, 22 October 2004, paras. 62-68; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR 96-14-A, Judgement, 9 July 2004, paras. 43-46; *The Prosecutor v. Jean Paul Akayesu*, Case No. 96-4-A, 1 June 2001, paras. 85-101. *See also The Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000, paras. 164-215.
[15] *See The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Disqualification of the Appeals Chamber, 9 December 2004, para. 3 (ICTY Bureau) ("*Šešelj* Decision"); *Galić* Appeals Chamber Decision, paras. 8, 9.
[16] *Šešelj* Decision, para. 3; *Galić* Appeals Chamber Decision, paras. 8, 9; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision on Galić's Application pursuant to Rule 15 (B), 28 March 2003, para. 7.
[17] Impugned Decision, para. 4.

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Seromba's request as improperly filed,[18] the Appeals Chamber cannot conclude that it erred in considering the matter in the first instance.

7. For the foregoing reasons, as there was no right of appeal in this instance, the Appeals Chamber **DISMISSES** this appeal.

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

Done this 22nd day of May 2006,
At The Hague,
The Netherlands.

Judge Fausto Pocar
Presiding

[Seal of the Tribunal]

[18] *Šešelj* Decision, para. 3.

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The Prosecutor
v.
Athanase Seromba

~~Case No / no. de l'affaire: ICTR-2001-66-AR~~

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TRANSLATION SECTION
☐ Mr Charles Zama
☐ For Information ☐ For Translation

DEFENSE
☐ Accused / *accusé* : Mr **Athanase Seromba**

☐ Lead Counsel / *Conseil Principal*: Mr Monthé

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