



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

Original: English

**Before Judges: William H. Sekule, Presiding
Winston C. Matanzima Maqutu
Arlette Ramaroson**

Registrar: Adama Dieng

Judgment of: 22 January 2004

THE PROSECUTOR

v.

Jean de Dieu Kamuhanda

Case No. ICTR-99-54A-T

Judge Maqutu's Dissent on the Sentence

Counsel for the Prosecution:

Mr. Marks Moore Senior Trial Attorney

Mr. Ibukunolu Alao Babajide Trial Attorney

Ms. Dorothee Marotine Case Manager

Counsel for the Defence:

Ms. Aïcha Condé Lead Counsel

Ms. Patricia Mongo Co Counsel

Ms. Seynabou Benga Legal Assistant

Ms. Anta Guisse Legal Assistant

1. We are dealing with Rwanda. A country which is by no means different from other African countries where tribalism is at places rife and sometimes leads to genocidal civil wars and disorders. The ethnic tensions between Hutu and Tutsi are endemic and have previously led to violent killings. It is a unique problem because both the Hutu and the Tutsi speak the same language, Kinyarwanda. I understand that they have the same

customs, religion and culture. They share names and surnames. Yet, in the past they had separate identity cards.

2. To an outsider, the situation and differences between Hutu and Tutsi are difficult to understand. It should have been easier if the differences were that of class distinction. But they are historical and complex. Perhaps it is similar to that of Patricians and Plebeians in ancient Rome. The tragedy that began with the Gracchi brothers, led to a violent genocidal civil war between Marius and Sulla, the vestiges of this civil war led to the accession of Julius Caesar and the end of the Roman Republic – not long thereafter. It is this blood-letting heritage that Rwandans have to divest themselves of before it is too late. The Rwandan government is presently tackling this issue and searching for ways to end the cycle of killing.

3. In Resolution 1165 of 1998, the Security Council (after reaffirming Resolution 955 of 1994 under which this Tribunal was established) stated :

Remaining convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law will contribute to the process of national reconciliation and the maintenance of peace in Rwanda and the region.

[Emphasis added]

4. The purpose of this Tribunal (in a traditional judicial fashion) is to firmly and robustly punish genocide and crimes against humanity with the object hopefully of helping Rwanda's reconciliation. The Government of Rwanda has taken serious steps to deal with some of the offences through the Gacaca courts. Although the offences dealt with by Gacaca may relatively speaking be more individual in scale – they cumulatively constitute the essence of genocide and crimes against humanity. The basis of Gacaca courts is for neighbours and peer groups to participate in the judicial process. Even the judges are ordinary villagers from the same environment. It is before them that the accused must appear and be heard. His alleged failings have to be assessed by people who have been through the same pressures and who can empathise with him. It is before them that the accused has to show penance. Only then can an attempt at moral restitution be worked out. The International Tribunal has no system or guidelines of the nature that Gacaca courts have, to actually put into effect the reconciliation element. These belong to the indigenous Rwandan culture.

5. At the root of my dissent from the majority is the imposition of life imprisonment on the accused. A life sentence is the highest sentence that this Tribunal may impose. I take the view that sentences should differ depending on the circumstances of each case.

6. Evidence has been given that shows the accused was a good man. It has been shown that he belonged to a group of intellectuals who were not happy with the promotion of ethnic divisions between the Hutu and Tutsi. Prosecution Witness GET has stated he was surprised when the accused chose to remain in the MRND when multi-partyism became

State policy in Rwanda. Witness GET (who was made a bourgmestre after the genocide) could not initially entertain allegations that the Accused had committed the crimes with which he is charged. Witnesses however kept on coming with respect to the Accused's role in events of April 1994. Eventually the authorities had to take notice.

7. Evidence also shows (albeit as hearsay) that the Accused warned his Tutsi friend in Gishaka as early as 30 March 1994 that the Tutsi were going to be killed and advised them to flee. The Accused had married a woman whose mother was a Tutsi and consequently he can not be accused of hatred of the Tutsi. Two or three days before 6 April 1994 (when the President's plane was shot down), the Accused had visited his Tutsi mother-in-law with his wife and children.

8. The question that the Accused alone can answer is – why did he participate in genocide against the Tutsi?

9. The Accused told the Chamber that he became a Minister because he was afraid to decline the honour. There is evidence from Nkiko Nsengimana (which is not challenged) that Sindikubwabo, whose Tutsi wife had been killed, was fetched from Butare and made Acting President when he believed he was about to be killed. Not long thereafter Acting President Sindikubwabo was addressing meetings saying that the Hutu should “work” and kill Tutsis. It is difficult to believe that the Accused could have been afraid of a regime that was clearly on the verge of falling. We are not being told the whole story.

10. It seems to me that (from the beginning) the Accused went along with the genocide out of opportunism and because his moral courage had deserted him. He ingratiated himself to the powers of the day that were exterminating the Tutsis by leading a genocidal attack on the Tutsi who had sought sanctuary at the Gikomero Protestant Parish. Having acquired the credentials of a genocidaire of the Tutsis, he was now firmly in the camp of the former Rwandan government that was leading the extermination of the Tutsi and moderate Hutu. I do not believe he was compelled to be a Minister – as the Accused would have us believe. The view I take is that the Accused had already allowed himself to be used as a tool of the genocidal extremists who were running Rwanda.

11. The Accused's conduct shows he was probably reluctant to participate in the genocide. He may have been only a public servant involved in matters of higher education and culture, yet, the prestige of the office he held and the high level of his education made him a role model to others. People looked up to him for leadership. For a reason he alone knows (and did not share with the Chamber) he went to Gikomero where Tutsi and Hutu were living together as neighbours – in peace. He led a group of armed Hutus, some of whom were from outside Gikomero, to Gikomero Protestant Parish to go and kill the Tutsi.

12. It is clear from the evidence that all he wanted was to see others do the killing. A person in a position of leadership is answerable as if he had actually killed. It is significant that some of those he incited and led to the killing are probably facing the death penalty in Rwanda. He has given Rwandan Hutus a bad name by violating the

customary internationally recognized sanctuary status of the Gikomero Protestant Parish Church.

13. People of stature such as the Accused who was in a position of leadership, cannot be allowed to abdicate moral responsibility and claim they were afraid to do what is expected of them. We have no clear evidence that the political party – MRND, to which Accused belonged, was bent on genocide – and even if it had been, more would be required by law before the Accused could be called upon to account. Consequently the Accused is not being convicted merely because he belonged to the MRND. He is being convicted for inciting unwilling Hutu living in a peaceful neighbourhood with Tutsis to kill them. Some of them had Tutsi wives or, like him, half Tutsi wives. He is also being convicted for leading a group of Tutsi to Gikomero Protestant Parish (which was a sanctuary) to kill unarmed Tutsi that were there. His crime is a very serious one indeed.

14. I believe (in the light of the foregoing) despite the Accused's lack of physical and moral courage at a crucial time, the heinousness of the Accused's act, the hundreds or thousands that died, that the Accused should not be given the highest sentence of life imprisonment. The Accused must in my view be given a chance to reflect, and if possible learn from his mistakes and teach others – if he becomes so minded. Many people have done a lot of good in prison by writing for those outside prison. Rwandans are his people, perhaps he will be able to add his voice to the many voices that say Rwandans should recognise their common humanity, nationality and destiny.

I would therefore sentence the Accused to:

TWENTY FIVE (25) YEARS IMPRISONMENT

Less the time the Accused has already spent in custody at the behest of the Tribunal.

Arusha, 22 January 2004

Winston C. M. Maqutu
Judge

(Seal of the Tribunal)