

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-99-54A-A
APPEALS CHAMBER

JEAN DE DIEU KAMUHANDA

v.
THE PROSECUTOR
OF THE TRIBUNAL

MONDAY, 19 SEPTEMBER 2005
1100H
JUDGEMENT

Before the Judges:

Theodor Meron, Presiding
Mohamed Shahabuddeen
Florence Ndepele Mwachande Mumba
Wolfgang Schomburg
Inés Monica Weinberg de Roca

For the Registry:

Mr. Constant K. Hometowu
Mr. Emmanuel Mwanja
Ms. Rosette Muzigo-Morrison

For the Prosecution:

Mr. James Stewart

For the Appellant Jean de Dieu Kamuhanda:

Ms. Aïcha Condé

Court Reporter:

Ms. Sherri Knox

P R O C E E D I N G S

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MR. PRESIDENT:

(Inaudible)...thank you. Let me open by asking the registrar to please call the case.

MS. MUZIGO-MORRISON:

The Appeals Chamber of the International Criminal Tribunal for Rwanda *(unintelligible)* Judge Meron, presiding, Judge Shahabuddeen, Judge Mumba, Judge Schomburg, Judge Weinberg de Roca, is sitting in an open session at The Hague pursuant to the ICTR President's decision of 6th September to deliver the judgement on appeal in the matter of Jean De Dieu Kamuhanda versus the Prosecutor, Case No. ICTR-99-54A-A.

Most obliged, My Lord.

MR. PRESIDENT:

Thank you, registrar.

Now we'd like to ask for the appearances of the parties. First, counsel for the Appellant.

MS. CONDÉ:

Yes, sir. Good morning, Your Honour. My name is Aïcha Condé. I'm the counsel for

Mr. Jean De Dieu Kamuhanda. I'm here with Mr. Seynabou Benga.

MR. PRESIDENT:

Prosecution.

MR. STEWART:

Good morning, Mr. President, Members of the Court. On behalf of the Prosecutor, James Stewart appearing.

MR. PRESIDENT:

Thank you, Mr. Stewart.

This judgement is being delivered at The Hague, the Netherlands, away from the seat of the Tribunal as authorised pursuant to Rule 4 of the Rules of Procedure and Evidence by the President of the International Criminal Tribunal for Rwanda.

The Appeals Chamber of the International Criminal Tribunal for Rwanda will now deliver its judgement in the case of Jean De Dieu Kamuhanda against the Prosecutor. I would like to emphasise that I will read out a summary of the judgement in this case and not the text of the judgement itself. The summary forms no part of the judgement. It's an authoritative account of the Appeals Chamber's reasoning and conclusions. It's found in the English version of the written judgement. Copies of the judgement will be made available to the parties and to the public at the close of this hearing. Following the reading of the summary, I will pronounce the disposition.

The Appeals Chamber is seized of an appeal by Jean De Dieu Kamuhanda against the judgement and sentence rendered by Trial Chamber II on 22 January 2004. The Appellant Jean De Dieu Kamuhanda was born on 3 March 1953 in Gikomero *commune*, Kigali rural *préfecture*, Rwanda. The Appellant was minister of higher education and scientific research in the interim government from 25 May 1994 until mid-July 1994, and the Trial Chamber found that he held a prominent position in Rwanda which gave him certain influence in Gikomero. The Trial Chamber found that the Appellant distributed weapons to members of the *Interahamwe* and others engaged in attacks in Gikomero, and that he participated in crimes against the Tutsi population in Gikomero on 12 April 1994.

The Trial Chamber found the Appellant individually criminally responsible for instigating, ordering, and aiding and abetting the killing and extermination of members of the Tutsi ethnic group in the Gikomero parish compound pursuant to Article 6(1) of the statute. Accordingly, the Trial Chamber found the Appellant guilty of the following crimes: Genocide, count 2, and extermination as a crime against humanity, count 5.

The Trial Chamber, by a majority, sentenced the Appellant to imprisonment for the remainder of his life for convictions on each of counts 2 and 5 with the sentences to run concurrently.

The Appellant is appealing against the convictions and the sentences and requests the Appeals Chamber to quash the trial judgement, enter a verdict of not guilty on each of the charges, and order his immediate release; or, in the alternative, to return the case to a differently composed Trial Chamber; or, as a third alternative, to overturn the sentences imposed and sentence him to a fixed term of imprisonment.

The Appellant has divided his grounds of appeal into three categories: Errors of law, errors of fact, and appeal against the sentence. Within these categories, the Appeals Chamber has identified 15 grounds of appeal. I will now summarise each of the Appellant's grounds of appeal and the Appeals Chamber's finding. Before doing so, however, it is appropriate to recall that pursuant to Article 24 of the Tribunal's statute, the Appeals Chamber only considers alleged errors of law by the Trial Chamber which invalidate the final judgement, and errors of fact which occasion a miscarriage of justice.

With regard to an alleged error of law, the Appeals Chamber may step in *proprio motu*, and for other reasons than those raised by the parties, find in favour of the contention that there is an error of law.

With regard to an alleged error of fact, the Appeals Chamber will not lightly overturn findings of fact made by a Trial Chamber. The Appeals Chamber will only interfere with those findings where no reasonable trier of fact could have reached the same finding or where the finding is wholly erroneous.

Furthermore, the erroneous finding will be revoked or revised only if the error occasioned a miscarriage of justice.

Under the first ground of appeal, the Appellant submits that the indictment did not properly inform him about the nature and cause of the charges against him. The Appellant alleges that, one, the charge relating to the massacres in Gishaka Catholic parish was imprecise; and, two, the indictment lacked precision regarding the allegations that he distributed weapons in Gikomero.

The Appeals Chamber declines to address alleged error of law relating to the charge concerning the events in Gishaka Catholic parish because the Appellant was not found guilty on the charge, and the allegation does not raise any legal issue of a broader interest.

While the Appeals Chamber finds that the indictment was defective as to the allegations that the Appellant distributed weapons in Gikomero, the Appeals Chamber holds that the Prosecutor provided the Appellant with timely, clear, and consistent information about this distribution of weapons. Moreover, the Appellant did not object at trial to the only evidence adduced to prove this fact, the testimony of Witness GEK, and he had ample opportunity to prepare his defence. Accordingly, the Appeals Chamber dismisses this subground of appeal and rejects the first ground of appeal in its entirety.

Under his second ground of appeal, the Appellant submits that the Trial Chamber erred in law by failing to consider certain exhibits introduced by the parties. For reasons explained in the judgement, the Appeals Chamber disagrees and dismisses this ground of appeal.

Under his fourth ground of appeal, the Appellant submits that the Trial Chamber erred in law by requiring the Defence to prove its argument beyond reasonable doubt, in effect, requiring him to prove his innocence. The Appeals Chamber, Judge Weinberg de Roca dissenting, finds that the Appellant has not established that the Trial Chamber misapplied the burden of proof and rejects this ground of appeal. The Appeals Chamber notes that in some instances the Trial Chamber applied language which prima facie supports the Appellant's arguments. However, these passages have to be read in context. The fact that the Trial Chamber used language in some instances which may be misunderstood does not necessarily mean that it fundamentally misplaced the burden of proof.

In his fifth ground of appeal, the Appellant submitted the Trial Chamber erred in law by misapprehending the standard and tests for assessing evidence. The Appellant submits that the Trial Chamber found Defence witnesses not to be credible upon realising the slightest discrepancy in their testimony, whereas it accepted the testimony of Prosecution witnesses, even if it showed irreparable

1 discrepancies.

2
3 The Appeals Chamber understands that the Appellant contends that the Trial Chamber applied different
4 standards for the assessment of Defence and Prosecution witnesses, thus breaching his right to a fair
5 trial. With regard to the alleged application of a stricter standard to Defence witnesses, the Appeals
6 Chamber notes that the Appellant relies only on the assessment of the evidence of four of his alibi
7 witnesses whose evidence had been, in fact, rejected because of inconsistencies in their testimonies.

8
9 The Appeals Chamber observes, however, that the Trial Chamber rejected the evidence of Prosecution
10 witnesses on a number of occasions partly because of inconsistencies. The Appeals Chamber is not
11 satisfied that the Appellant has established an inconsistent approach on the part of the Trial Chamber,
12 and accordingly, rejects this ground of appeal.

13
14 Under his seventh grounds of -- ground appeal, the Appellant submits that the Trial Chamber distorted
15 several arguments of the Defence as well as the testimony of Defence witnesses, thus denying him the
16 right to a fair trial. Most of his arguments in support of this submission relate closely to alleged errors of
17 fact and are addressed in subsequent chapters of the judgement.

18
19 At this point, the Appeals Chamber will only address the allegation that the Trial Chamber distorted the
20 Defence argument about the origin of the attackers at the Gikomero parish compound. The Appeals
21 Chamber finds that the Appellant has not demonstrated that the Trial Chamber distorted the Defence
22 position that the attackers came from Rubungu. Rather, the Trial Chamber simply made a finding of
23 fact based on the evidence and felt it more redeemed the issue immaterial to the Appellant's criminal
24 responsibility. In both respects, the Trial Chamber did not distort the Appellant's arguments but simply
25 disagreed with them. Accordingly, the Appeals Chamber dismisses this submission.

26
27 In ground of appeal number 8, the Appellant alleges that the Trial Chamber erred in law by holding him
28 responsible on the basis of Article 6(1) of the statute. In the Appellant's view, none of the modes of
29 participation enumerated in this provision could be imputed to him. He further alleges that the Trial
30 Chamber erred by finding him guilty of genocide and extermination without sufficient proof or his -- of
31 the intent required for either crime.

32
33 With respect to his conviction for instigating the killing and extermination of members of the Tutsi ethnic
34 group at the Gikomero parish compound, the Appellant argues that the Prosecution did not adduce
35 evidence proving the existence of a causal link between the incitement and the commission of the
36 crime, because the persons to whom the Appellant allegedly gave weapons were not present during the
37 massacre and because it was never established that the weapons which the Appellant had distributed

1 were used for the crimes.

2
3 The Appeals Chamber agrees and finds that the Trial Chamber's conclusion that the Appellant
4 instigated assailants to kill members of the Tutsi ethnic group is not supported by the evidence.

5
6 Next, the Appellant challenges the Trial Chamber's finding that he aided and abetted the commission of
7 the crimes through the distribution of weapons and by leading the attackers to the Gikomero parish
8 compound. The Appeals Chamber, Judge Schomburg dissenting, agrees with the Appellant that the
9 evidence does not support any connection between the distribution of weapons and the subsequent
10 attack on the Gikomero parish compound. However, the Appeals Chamber recalls that the Trial
11 Chamber enumerated a number of factual findings on which it based its conclusion that the Appellant
12 aided and abetted the commission of the crimes by leading the attackers. The Appeals Chamber finds
13 that the reasonable trial of fact could arrive at the conclusion that the Appellant aided and abetted the
14 commission of the crimes by his actions at the Gikomero parish compound on 12th April 1994. The
15 erroneous finding of the Trial Chamber that the Appellant also aided and abetted the commission of
16 crimes by distributing weapons, therefore, does not amount to a miscarriage of justice.

17
18 As for ordering, the Appellant submits that it has not been demonstrated that he held a position of
19 authority in relation to the assailants. He points to the Trial Chamber's finding that there was no
20 specific evidence concerning the relationship between the attackers and him and to the fact that the
21 Trial Chamber did not find him responsible under Article 6(3) of the statute arguing that this should have
22 prevented the Trial Chamber from finding him responsible for ordering under Article 6(1) of the statute.

23
24 The Appeals Chamber notes that superior responsibility under Article 6(3) of the statute is a distinct
25 mode of responsibility from individual responsibility for ordering a crime under Article 6(1) of the statute.
26 Superior responsibility under Article 6(3) of the statute requires that the Accused exercised effective
27 control over his subordinates to the extent that he can prevent them from committing crimes or punish
28 them after they committed the crimes. To be held responsible under Article 6(1) of the statute for
29 ordering a crime, on the contrary, it is sufficient that the Accused have authority over the perpetrator of
30 the crime and that his order have a direct and substantial effect on the commission of the illegal act.

31
32 In the view of the Appeals Chamber, the factual finding that the Appellant gave the order to start a
33 massacre and that this order was obeyed was not unreasonable. The Appeals Chamber finds that the
34 reasonable trier of fact could conclude from the fact that the order to start a massacre was directly
35 obeyed by the attackers, that this order had direct and substantial effect on the crime, and that the
36 Appellant had authority over the attackers.

1 The factual findings of the Trial Chamber supports the Appellant's conviction for aiding and abetting, as
2 well as for ordering the crimes. But both modes of participation form distinct categories of
3 responsibility. In this case, however, both modes of responsibility are based on essentially the same
4 set of facts. The Appellant led the attackers in the attack, and he ordered the attackers to start the
5 killings.

6
7 On the facts of this case with the Appeals Chamber disregarding the finding that the Appellant
8 distributed weapons for the purposes of -- purposes of determining whether the Appellant aided and
9 abetted the commission of the crimes, the Appeals Chamber, Judge Shahabuddeen dissenting, does
10 not find the remaining facts sufficiently compelling to maintain the conviction for aiding and abetting. In
11 this case, the mode of responsibility of ordering fully encapsulates the Appellant's criminal conduct at
12 the Gikomero parish compound.

13
14 The Appellant next submits that his intent to destroy the Tutsis ethnic group, in whole or in part, has not
15 been proven. The Appeals Chamber recalls that the Trial Chamber based its conclusion with respect to
16 the Appellant's intent to destroy the Tutsi ethnic group on a number of the findings. The Appeals
17 Chamber finds that the fact that the Appellant gave the order to attack the refugees at the Gikomero
18 parish compound, starting a massacre that resulted in the death of a large number of Tutsis refugees,
19 would allow a reasonable trier of fact to find that the Appellant had a genocidal intent.

20
21 In addition, the Appeals Chamber notes evidence of the Appellant's statements made at a meeting in
22 Gikomero. At this meeting he addressed those present and told them that the killings in Gikomero
23 *commune* had not yet started and that those who were to assist him to start had married Tutsi women.
24 The Appellant told those present that he would bring equipment for them to start and that if their women
25 were in the way, they should first eliminate them. The Appeals Chamber finds that these statements of
26 the Appellant are direct evidence of his genocidal intent. Accordingly, the Appeals Chamber finds that
27 the Trial Chamber did not err in holding that the Appellant had the specific intent to destroy the Tutsi
28 ethnic group when he gave the order which resulted in the deaths of a large number of Tutsi refugees.

29
30 Lastly, under this ground of appeal, the Appellant submits that the constituent elements of
31 extermination as a crime against humanity have not been established. He challenges the Trial
32 Chamber's finding that the attack at the Gikomero parish compound formed part of a widespread or
33 systematic attack against the Tutsi population, and in addition, argues that the Trial Chamber did not
34 establish that he was aware of the general context of the attack.

35
36 The Appeals Chamber finds that the Appellant's arguments about the relationship between the attacks
37 against Tutsis in Rwanda in general, and specifically the attack on the Tutsi refugees at the Gikomero

1 parish compound, is without merit. The Appellant admitted at trial that during the relevant time, there
2 were, throughout Rwanda, widespread or systematic attacks against the population with the specific
3 objective of extermination of the Tutsi. Moreover, the Trial Chamber found that the Appellant,
4 accompanied by soldiers, policemen, and armed *Interahamwe*, came to Gikomero parish compound
5 and gave the order to attack, which was followed by the killing of a large number of Tutsi refugees.
6

7 Finally, given these circumstances and his earlier admonishment that the killings in Gikomero *commune*
8 had not yet started, it was reasonable for the Trial Chamber to conclude that the Appellant knew that
9 this was not an isolated occurrence, but part of a widespread and systematic attack on the Tutsi
10 population.
11

12 The Appeals Chamber concludes that the Trial Chamber erred when it found the Appellant individually
13 criminally responsible under Article 6(1) of the statute for instigating others to commit crimes, but did
14 not err in finding that he was individually criminally responsible for ordering those crimes. Although, as
15 explained above, the finding of his individual criminal responsible for aiding and abetting to crimes is
16 supported by the Trial Chamber's factual findings, the Appeals Chamber, Judge Shahabuddeen
17 dissenting, deems it appropriate to confirm only the finding of the Appellant's individual criminal
18 responsibility for ordering the crimes.
19

20 The Appellant's arguments with regard to his convictions for genocide and extermination are
21 unfounded, and the related subgrounds of appeal are therefore dismissed.
22

23 Under the ninth and partially the sixth ground of appeal, the Appellant submits that the Trial Chamber
24 erred in fact by making an erroneous assessment of his testimony. Specifically, the Appellant contends
25 that the Trial Chamber did not take into account his explanations rebutting the testimony of
26 Witness GES and his explanations concerning his name and the events at Gikomero parish compound.
27 The Appellant has also raised the first two arguments in his sixth ground of appeal, submitting that the
28 Trial Chamber erred in law when it gave insufficient or no reasons for rejecting Witness PC's
29 explanation concerning the meaning of Kamuhanda in Kinyarwanda, as well as in respect of the
30 Appellant's testimony concerning his name and that which, in his view, rebuts part of Witness GS's
31 testimony. As explained in the judgement, the Appeals Chamber dismisses the appeal with respect to
32 each of these issues.
33

34 In the 11th, as well as other grounds of appeal, the Appellant submits that the Trial Chamber erred
35 when it dismissed the evidence tending to show that it was impossible to travel from Kigali to Gikomero
36 around 12 April 1994 because the roads leading there were impossible due to fierce fighting. The
37 Appellant's main argument is that the evidence of the seventh witnesses assessed in its entirety

1 showed that it was impossible to travel between Kigali and Gikomero between 7 and 17 April 1994.

2
3 The Appeal Chamber recalls that in the present case the issue is not the possibility of travel as such,
4 but the Appellant's presence in Gikomero on 12th April 1994. The Appellant could only succeed with
5 this ground of appeal if he demonstrated that no reasonable trier of fact could have found, taking into
6 account the competing evidence concerning his presence in Gikomero, his presence in Kigali, and the
7 road condition between the two, that the Prosecution had proved beyond a reasonable doubt that he
8 was present in Gikomero when the crimes were committed. In the view of the Appeals Chamber, the
9 Appellant merely tries to replace the Trial Chamber's assessment of the evidence with his own without
10 showing that the Trial Chamber's assessment was unreasonable. Accordingly, this ground of appeal is
11 rejected.

12
13 In his second, seventh, and twelfth ground of appeal, the Appellant submits that the Trial Chamber
14 made several errors related to its finding that he distributed weapons to participants in the massacre at
15 the Gikomero parish. The Appellant submits the Trial Chamber's findings on this point were
16 unreasonable because they were based entirely on the testimony of Witness GEK, who, as the
17 Appellant contends, offered an untrustworthy, inconsistent and incredible account of the events.

18
19 First, the Appellant argues that there were so many errors and inconsistencies in Witness GEK's
20 account of the events at Gikomero *commune* that it was patently unreasonable for the Trial Chamber to
21 rely on her testimony in finding that the Appellant had distributed weapons.

22
23 After considering the party's submissions, the Appeals Chamber concludes that the discrepancies in
24 Witness GEK's testimony do not, either individually or collectively, so undermine her credibility as to
25 require a reasonable trial chamber to discount her testimony. The Appeals Chamber notes that on the
26 critical elements of her testimony against the Appellant, Witness GEK's testimony was unwavering.
27 The Appellant came to her house shortly after the crash of President Habyarimana's plane. He
28 rebuked the men he met there for not yet having started to kill Tutsis, he told them that their Tutsi wives
29 should be killed if they posed any problems, and he distributed weapons for them to use in the coming
30 massacre. Then on the day of the massacre, the Appellant came to Witness GEK's house with a
31 tractor -- truck load of *Interahamwe* and headed towards encamped refugees at Gikomero parish
32 compound, after which he heard gunshots and noise for roughly half an hour.

33
34 In the final analysis, the need to defer to the Trial Chamber on issues of credibility, particularly given the
35 importance of witness demeanour, leads the Appeals Chamber to hold that these inconsistencies do
36 not make it unreasonable for the Trial Chamber to have credited Witness GEK's evidence.

1 The Appellant further attacks the credibility of Witness GEK by contending that several Defence
2 witnesses contradicted her account of the distribution of weapons on at least two separate grounds.
3 First, three witnesses in Witness GEK's neighbourhood stated that they did not see the Appellant
4 distribute weapons. Second, the Appellant alleges that three witnesses testified that Witness GEK was
5 not even in Gikomero on the dates she alleged the weapons distribution took place.

6
7 As to the first point, the Appeals Chamber finds that the Appellant's submission is unavailing. The mere
8 fact that Witness GPK and Xaviera Mukaminani did not witness or hear about the arms distribution
9 does not mean that such a distribution of arms could not have occurred. Moreover, as discussed in the
10 judgement, Witness EM's credibility was so badly damaged during cross-examination that it was not
11 unreasonable for the Trial Chamber to discount her testimony entirely. As far as allegations that
12 Witness GEK was not in Gikomero at the relevant time, the Appeals Chamber notes that even if taken
13 at face value, neither Witness EM's nor Xaviera Mukaminani's testimony rules out the possibility that
14 Witness GEK was in Gikomero at the time of the alleged weapons distribution.

15
16 Witness EM's testimony acknowledges, at a minimum, that Witness GEK was in Gikomero on
17 6th April 1994. And Mukaminani's testimony was simply that she did not see Witness GEK in Gikomero
18 during that time. Equally important, as already mentioned, Witness EM's credibility was badly damaged
19 on cross-examination.

20
21 Accordingly, the Appeals Chamber finds that it was not unreasonable for the Trial Chamber to give
22 credence to Witness GEK's assertion that she was in Gikomero on the date of the alleged weapons
23 distribution.

24
25 The Appellant has raised additional arguments in order to demonstrate that Witness GEK was an
26 untrustworthy witness. For the reasons set out in the judgement, the Appeals Chamber dismisses
27 these arguments. Finally, in addition to considering the various challenges to Witness GEK's testimony
28 individually, the Appeals Chamber has considered whether in the aggregate the Appellant's contentions
29 cause such doubt on Witness's GEK's credibility as to render the Trial Chamber's reliance on her
30 testimony unreasonable.

31
32 The Appeals Chamber concludes that the principle of deference to the Trial Chamber on issues of fact,
33 and particularly in questions involving the in-person evaluation of demeanour and credibility, must
34 prevail. There is every indication that the Trial Chamber engaged in a careful and discerning process of
35 generally seeking to determine the credibility of each witness on a case-by-case basis.

36
37 When the Appellant has presented substantial reasons in support of his arguments relating to

1 Witness GEK, the Appeals Chamber cannot find that it was unreasonable for the Trial Chamber to
2 reach the opposite conclusion. Accordingly, the Appellant's submissions relating to Witness GEK are
3 dismissed.

4
5 In grounds of appeal 3, 10, 13, and 14, as well as partially in other grounds, the Appellant made
6 submissions relating both to the Trial Chamber's assessment of his alibi evidence and to the Trial
7 Chamber's finding on his presence at the Gikomero parish compound. In the view of the Appeals
8 Chamber, however, those issues are inextricably interrelated. If the Trial Chamber erred in rejecting
9 the Appellant's alibi evidence, this would have an influence on the examination of the Trial Chamber's
10 finding on his presence at the Gikomero parish compound and vice versa. For this reason, the grounds
11 of appeal related to the Trial Chamber's assessment of the alibi evidence and the finding on the
12 Appellant's presence at the Gikomero parish compound are considered together in the judgement.

13
14 The Appellant submits that the Trial Chamber erred in law and fact in rejecting his alibi. He advances
15 several arguments in support of this submission and concludes that his alibi succeeded in casting
16 reasonable doubt on the Prosecution case. For the reasons detailed in the judgement, the
17 Appeals Chamber, Judge Weinberg de Roca dissenting with respect to several findings, dismisses the
18 grounds of appeal related to the Trial Chamber's assessment of the alibi. While the Appeals Chamber
19 finds that the Trial Chamber mischaracterised some of the alibi evidence, it observes that the
20 Trial Chamber found the alibi as a whole not credible because the testimonies of the alibi witnesses
21 appeared designed for a purpose. The fact that the Trial Chamber characterised some of the testimony
22 imprecisely does not undermine this ultimate finding which the Trial Chamber made after hearing the
23 alibi witnesses before it and upon considering their testimonies in light of all the evidence.

24
25 The Appeals Chamber has admitted additional evidence from two witnesses, Witnesses GAA and GEX,
26 with regard to the Appellant's presence at the Gikomero parish compound. The Appeals Chamber
27 heard these witnesses, together with two witnesses called in rebuttal, Witnesses GAG and GEK.
28 Witness GAA testified before the Trial Chamber that he had seen the Appellant at the Gikomero parish
29 compound on 12th April 1994. In fact, the Trial Chamber held that he was one of the three witnesses
30 who had prior knowledge of the Appellant and was therefore capable of identifying him when he arrived
31 at the compound. During the evidentiary hearing before the Appeals Chamber, Witness GAA testified
32 that he had lied during trial when he stated that he been at the Gikomero parish compound and that he
33 had seen the Appellant there.

34
35 The Appeals Chamber notes that Witness GAA was consistent for many years in his statements that he
36 had been at the Gikomero parish in 1994 and that he had seen the Appellant there. As explained in the
37 judgement, the Appeals Chamber finds that Witness GAA's recantation during the evidentiary hearing

1 in May 2005 is not credible. Thus, the Appeals Chamber concludes that Witness GAA's additional
2 evidence could not have been a decisive factor in reaching the decision at trial. Because of the
3 consistencies -- consistency of his earlier statements and the corroboration by other witnesses, a
4 reasonable trier of fact could still rely on Witness GAA's trial evidence.

5
6 Prior to the trial phase, Witness GEX provided a statement to the Prosecution stating that the Appellant
7 was present at the Gikomero parish compound on 12th April 1994 and that he had started the attack by
8 saying the word *mukore*, meaning to work. The Prosecution disclosed this statement to the Defence
9 but did not call Witness GEX to testify at trial. Witness GEX testified before the Appeals Chamber that
10 she had been at Gikomero and had -- and had seen the killing of the preacher Augustin Bucundura.
11 She maintained, however, that contrary to her earlier statement given to the Prosecution, she had not
12 seen the Appellant at the scene, nor had she heard his name spoken there. As explained in the
13 judgement, the Appeals Chamber conclude -- concludes that Witness GEX's testimony during the
14 evidentiary hearing in May 2005 is unreliable.

15
16 Witness GAG and GEK were called by the Prosecution to rebut the additional evidence given by
17 Witnesses GAA and GEX. The Appeals Chamber, having found that the additional evidence could not
18 affect the Trial Chamber's decision does not consider it necessary to discuss the rebuttal evidence and
19 notes only that both rebuttal witnesses testified during the evidentiary hearing that they had told the
20 truth before the Trial Chamber.

21
22 For the reasons set out in the judgement, the Appeals Chamber did not consider the Prosecutor's filing
23 of additional information relating to the rebuttal testimony of Witness GAJ -- GAG.

24
25 In ground of appeal 13 as well as partially in ground of appeal 5, the Appellant submits that the
26 Trial Chamber erred in fact and law when it relied on his having been identified by Witnesses GAF,
27 GES, and GAA. He submits that the Trial Chamber erred in law by disregarding the standards
28 established by the jurisprudence of both the ICTR and the ICTY regarding identification evidence. The
29 Appeals Chamber finds that the Trial Chamber's method of assessing the identification evidence was
30 beyond reproach and, accordingly, rejects the Appellant's arguments.

31
32 In addition, the Appellant takes issue with the Trial Chamber's finding that the evidence of the
33 identification witnesses was corroborated by the testimony of a number of witnesses who had heard the
34 name of the Appellant when he arrived at Gikomero. The Appeals Chamber finds that the Trial
35 Chamber was aware of the specific difficulties which have to be taken into account for the assessment
36 of the mere shouting of Kamuhanda. Therefore, a reasonable trial chamber could, based on a free
37 assessment of the evidence before it, come to the conclusion that the evidence of these witnesses

1 corroborated the identification of the Appellant.

2
3 As to the error of fact, the Appellant submits that the three identification witnesses were unreliable and
4 that no reasonable trier of fact could have relied on their testimony that he was present at the Gikomero
5 parish compound because their evidence was inconsistent as to the material facts. For the reasons set
6 out in the judgement, the Appeals Chamber concludes that a reasonable trier of fact could rely on the
7 trial testimony of Witness GAF, GES, and GAA regarding the Appellant's identification and his
8 participation in the massacre.

9
10 With regard to the eight witnesses who gave corroborative evidence, the Appellant submits that they
11 contradicted each other and did not corroborate Witnesses GES, GAF, and GAA's evidence. The
12 Appeals Chamber finds that the alleged inconsistencies do not affect the core of the evidence given by
13 the witnesses and dismisses the Appellant's submission that the Trial Chamber's approach to the
14 evidence regarding the Gikomero parish compound was unreasonable.

15
16 Under his 14th ground of appeal, the Appellant submitted the Trial Chamber committed an error of fact
17 occasioning a miscarriage of justice when it dismissed Defence evidence related to his presence at
18 Gikomero which raised doubt about his guilt. The Trial Chamber emphasised repeatedly that it relied
19 on the evidence in its entirety to support its finding that the Appellant was present at the Gikomero
20 parish compound on 12th April 1994 and that he initiated the attack on the refugees assembled there.
21 These findings were supported by evidence from a number of direct and corroborative witnesses,
22 whereas none of the Defence witnesses was present during the initial phase of the attack. The
23 Appellant has not shown that the Trial Chamber committed an error occasioning a miscarriage of justice
24 in its assessment of the evidence. The Appeals Chamber, therefore, rejects the submissions
25 concerning the Appellant's presence at Gikomero on 12th April 1994.

26
27 Under his final ground of appeal, the Appellant submits that should the Appeals Chamber decide not to
28 overturn his conviction on the basis of the following grounds of appeal, it should revise the sentences
29 imposed by the Trial Chamber and sentence him to a term of imprisonment of five years.

30
31 In the view of the Appeals Chamber, the Appellant has failed to show that the Trial Chamber committed
32 any error in sentencing him as it did. The Appeals Chamber's decision to vacate the findings that the
33 Appellant instigated and aided and abetted genocide and extermination does not require the imposition
34 of a lesser sentence.

35
36 I will now read out in full the operative paragraphs of the Appeals Chamber judgement that is the
37 disposition.

1 Mr. Kamuhanda, would you please stand.

2
3 The Appeals Chamber, pursuant to Article 24 of the statute and Rule 118 of the rules, noting the written
4 submissions of the parties and their oral arguments presented at the hearing on 19 May 2005, sitting in
5 open session, vacates the Appellant's convictions for instigating genocide and extermination under
6 counts 2 and 5 respectively.

7
8 Vacates, Judge Shahabuddeen dissenting, the Appellant's convictions for aiding and abetting genocide
9 and extermination under counts 2 and 5 respectively.

10
11 Affirms, Judge Weinberg de Roca dissenting, the Appellant's convictions for genocide and
12 extermination as a crime against humanity, pursuant to Article 6(1) of the statute.

13
14 Dismisses, Judge Weinberg de Roca dissenting, the appeal in all other respects.

15
16 Affirms, Judge Weinberg de Roca dissenting, the sentence imposed by the Trial Chamber.

17
18 Orders, pursuant to Rule 101(D) of the rules that credit shall be given to the Appellant for the period
19 already spent in detention from 26 November 1999.

20
21 Rules that this judgement shall be enforced immediately pursuant to Rule 119 of the rules.

22
23 Orders, in accordance with Rule 103(B) and 107 of the rules that Jean De Dieu Kamuhanda is to
24 remain in the custody of the Tribunal pending his transfer to the state in which his sentence will be
25 served.

26
27 Mr. Kamuhanda, you may be seated.

28
29 I now request the registrar to please deliver copies of the judgement to the parties in this case.

30
31 This hearing of the Appeals Chamber of the International Criminal Tribunal for Rwanda stands
32 adjourned.

33 *(Court adjourned at 1152H)*

34 *(Pages 1 to 13 by Sherri Knox)*

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3 CERTIFICATE
4
5

6 I, Sherri Knox, Official Court Reporter for the International Criminal Tribunal for Rwanda, do hereby
7 certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as
8 stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the
9 foregoing pages contain a true and correct transcription of said proceedings to the best of my ability
10 and understanding.

11
12
13 I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in
14 nowise interested in the result of said cause.

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19 _____ Sherri Knox
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