

SUMMARY OF THE JUDGEMENT

JEAN DE DIEU KAMUHANDA v. THE PROSECUTOR

Case No. ICTR-99-54A-A

19 September 2005

The Hague, The Netherlands

I. INTRODUCTION

1. Good morning. Let me call this session of the International Criminal Tribunal for Rwanda to order. Can everyone hear and understand me? I would like to open this hearing by asking the Registrar to please call the case . . . Thank you.
2. Now, I would like to ask for the appearances of the parties. First, Counsel for the Appellant . . . Thank you. Second, the Prosecution . . . Thank you.
3. This Judgement is being delivered in The Hague, The Netherlands, away from the Seat of the Tribunal, as authorized, pursuant to Rule 4 of the Rules of Procedure and Evidence, by the President of the International Criminal Tribunal for Rwanda .
4. The Appeals Chamber of the International Criminal Tribunal for Rwanda will now deliver its Judgement in the case of *Jean de Dieu Kamuhanda v. The Prosecutor*.
5. I would like to emphasize that I will read out a summary of the Judgement in this case, and not the text of the Judgement itself. This summary forms no part of the Judgement. The only authoritative account of the Appeals Chamber's reasoning and conclusions is 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 then pronounce the Disposition.

II. SUMMARY OF THE JUDGEMENT

6. 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 Prefecture, 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.
7. 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 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.

8. 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 further 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 fifteen grounds of appeal.

9. I will now summarize each of the Appellant's grounds of appeal and the Appeals Chamber's findings. 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 favor 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.

10. 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: (1) the charge relating to the massacres in the Gishaka Catholic Parish was imprecise, and (2) the Indictment lacked precision regarding the allegations that he distributed weapons in Gikomero.

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

12. While the Appeals Chamber finds that the Indictment was defective as to the allegation that the Appellant distributed weapons in Gikomero, the Appeals Chamber holds that the Prosecution 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 sub-ground of appeal and rejects the first ground of appeal in its entirety.

13. 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.

14. 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.

15. In his fifth ground of appeal the Appellant submits that 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 realizing the slightest discrepancy in their testimony, whereas it accepted the testimony of Prosecution witnesses even if it showed irreparable discrepancies. The Appeals Chamber understands that the Appellant contends that the Trial Chamber applied different standards for the assessment of Defence and Prosecution witnesses, thus breaching his right to a fair trial. With regard to the alleged application of a stricter standard to Defence witnesses, the Appeals Chamber notes that the Appellant relies only on the assessment of the evidence of four of his alibi witnesses, whose evidence had been in fact rejected because of inconsistencies in their testimonies. The Appeals Chamber observes, however, that the Trial Chamber rejected the evidence of Prosecution witnesses on a number of occasions, partly because of inconsistencies. The Appeals Chamber is not satisfied that the Appellant has established an inconsistent approach on the part of the Trial Chamber and, accordingly, rejects this ground of appeal.

16. Under his seventh ground of appeal, the Appellant submits that the Trial Chamber distorted several arguments of the Defence as well as the testimony of Defence witnesses, thus denying him the right to a fair trial. Most of his arguments in support of this submission relate closely to alleged errors of fact and are addressed in subsequent chapters of the Judgement. At this point, the Appeals Chamber will only address the allegation that the Trial Chamber distorted the Defence argument about the origin of the attackers at the Gikomero Parish Compound. The Appeals Chamber finds that the Appellant has not demonstrated that the Trial Chamber distorted the Defence position that the attackers came from Rubungu. Rather, the Trial Chamber simply made a finding of fact based on the evidence, and furthermore deemed the issue immaterial to the Appellant's criminal responsibility. In both respects, the Trial Chamber did not distort the Appellant's arguments but simply disagreed with them. Accordingly, the Appeals Chamber dismisses this submission.

17. In ground of appeal number eight, the Appellant alleges that the Trial Chamber erred in law by holding him responsible on the basis of Article 6(1) of the Statute. In the Appellant's view, none of the modes of participation enumerated in this provision could be imputed to him. He further alleges that the Trial Chamber erred by finding him guilty of genocide and extermination without sufficient proof of the intent required for either crime.

18. With respect to his conviction for instigating the killing and extermination of members of the Tutsi ethnic group at the Gikomero Parish Compound, the Appellant argues that the Prosecution did not adduce evidence proving the existence of a causal link between the incitement and the commission of the crime, because the persons to whom the Appellant allegedly gave weapons were not present during the massacre, and because it was never established that the weapons which the Appellant had distributed were used for the crimes. The Appeals Chamber agrees and finds that the Trial Chamber's conclusion that the Appellant instigated assailants to kill members of the Tutsi ethnic group is not supported by the evidence.

19. Next, the Appellant challenges the Trial Chamber's finding that he aided and abetted the commission of the crimes through the distribution of weapons and by leading the attackers to the Gikomero Parish Compound. The Appeals Chamber, J/Schomburg dissenting, agrees with the Appellant that the evidence does not support any connection between the distribution of weapons and the subsequent attack on the Gikomero Parish Compound. However, the Appeals Chamber recalls that the Trial Chamber enumerated a number of factual findings on which it based its conclusion that the Appellant aided and abetted the commission of the crimes by leading the attackers. The Appeals Chamber finds that a reasonable trier of fact could arrive at the conclusion that the Appellant aided and abetted the commission of the crimes by his actions at the Gikomero Parish Compound on 12 April 1994. The erroneous finding of the Trial Chamber that the Appellant also aided and abetted the commission of crimes by distributing weapons therefore does not amount to a miscarriage of justice.

20. As for ordering, the Appellant submits that it has not been demonstrated that he held a position of authority in relation to the assailants. He points to the Trial Chamber's finding that there was no specific evidence concerning the relationship between the attackers and him, and to the fact that the Trial Chamber did not find him responsible under Article 6(3) of the Statute, arguing that this should have prevented the Trial Chamber from finding him responsible for ordering under Article 6(1) of the Statute. The Appeals Chamber notes that superior responsibility under Article 6(3) of the Statute is a distinct mode of responsibility from individual responsibility for ordering a crime under Article 6(1) of the Statute. Superior responsibility under Article 6(3) of the Statute requires that the accused exercise "effective control" over his subordinates to the extent that he can prevent them from committing crimes or punish them after they committed the crimes. To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act. In the view of the Appeals Chamber, the factual finding that the Appellant gave the order to start the massacre, and that this order was obeyed, was not unreasonable. The Appeals Chamber finds that a reasonable trier of fact could conclude from the fact that the order to start the massacre was directly obeyed by the attackers that this order had direct and substantial effect on the crime, and that the Appellant had authority over the attackers.

21. The factual findings of the Trial Chamber support the Appellant's conviction for aiding and abetting as well as for ordering the crimes. Both modes of participation form distinct categories of responsibility. In this case, however, both modes of responsibility are based on essentially the same set of facts: the Appellant "led" the attackers in the attack and he ordered the attackers to start the killings. On the facts of this case, with the Appeals Chamber disregarding the finding that the Appellant distributed weapons for the purposes of determining whether the Appellant aided and abetted the commission of the crimes, the Appeals Chamber, Judge Shahabuddeen dissenting, does not find the remaining facts sufficiently compelling to maintain the conviction for aiding and abetting. In this case the mode of responsibility of ordering fully encapsulates the Appellant's criminal conduct at the Gikomero Parish Compound.

22. The Appellant next submits that his intent to destroy the Tutsi ethnic group in whole or in part has not been proven. The Appeals Chamber recalls that the Trial Chamber based its conclusion with respect to the Appellant's intent to destroy the Tutsi ethnic group on a number of findings. The Appeals Chamber finds that the fact that the Appellant gave the order to attack the refugees at the Gikomero Parish Compound, starting a massacre that resulted in the death of a large number of Tutsi refugees, would allow a reasonable trier of fact to find that the Appellant had a genocidal intent. In addition, the Appeals Chamber notes evidence of the Appellant's

statements made at a meeting in Gikomero: At this meeting, he addressed those present and told them that the killings in Gikomero Commune had not yet started and that “those who were to assist him to start had married Tutsi women.” The Appellant told those present that he would bring “equipment” for them to start, and that if their women were in the way, they should first eliminate them. The Appeals Chamber finds that these statements of the Appellant are direct evidence of his genocidal intent. Accordingly, the Appeals Chamber finds that the Trial Chamber did not err in holding that the Appellant had the specific intent to destroy the Tutsi ethnic group when he gave the order which resulted in the death of a large number of Tutsi refugees.

23. Lastly under this ground of appeal, the Appellant submits that the constituent elements of extermination as a crime against humanity have not been established. He challenges the Trial Chamber’s finding that the attack at the Gikomero Parish Compound formed part of a widespread or systematic attack against the Tutsi population and, in addition, argues that the Trial Chamber did not establish that he was aware of the general context of the attack. The Appeals Chamber finds that the Appellant’s argument about the relationship between the attacks against Tutsis in Rwanda, in general, and, specifically, the attack on the Tutsi refugees at the Gikomero Parish Compound, is without merit. The Appellant admitted at trial that during the relevant time there were, throughout Rwanda, widespread or systematic attacks against a population with the specific objective of extermination of the Tutsi. Moreover, the Trial Chamber found that the Appellant, accompanied by soldiers, policemen, and armed *Interahamwe*, came to the Gikomero Parish Compound and gave the order to attack, which was followed by the killing of a large number of Tutsi refugees. Finally, given these circumstances, and his earlier admonishment that the killings in Gikomero Commune had not yet started, it was reasonable for the Trial Chamber to conclude that the Appellant knew that this was not an isolated occurrence, but part of a widespread and systematic attack on the Tutsi population.

24. The Appeals Chamber concludes that the Trial Chamber erred when it found the Appellant individually criminally responsible under Article 6(1) of the Statute for instigating others to commit crimes, but did not err in finding that he was individually criminally responsible for ordering those crimes. Although, as explained above, the finding of his individual criminal responsibility for aiding and abetting the crimes is supported by the Trial Chamber’s factual findings, the Appeals Chamber, Judge Shahabuddeen dissenting, deems it appropriate to confirm only the finding of the Appellant’s individual criminal responsibility for ordering the crimes. The Appellant’s arguments with regard to his convictions for genocide and extermination are unfounded and the related sub-grounds of appeal are therefore dismissed.

25. Under the ninth and partially the sixth ground of appeal, the Appellant submits that the Trial Chamber erred *in fact* by making an erroneous assessment of his testimony. Specifically, the Appellant contends that the Trial Chamber did not take into account his explanations rebutting the testimony of Witness GES and his explanations concerning his name and the events at the Gikomero Parish Compound. The Appellant has also raised the first two arguments in his sixth ground of appeal, submitting that the Trial Chamber erred *in law* when it gave insufficient or no reasons for rejecting Witness PC’s explanation concerning the meaning of “Kamuhanda” in Kinyarwanda as well as in respect of the Appellant’s testimony concerning his name and that which, in his view, rebuts parts of Witness GES’s testimony. As explained in the Judgement, the Appeals Chamber dismisses the appeal with respect to each of these issues.

26. In the eleventh as well as other grounds of appeal, the Appellant submits that the Trial Chamber erred when it dismissed the evidence tending to show that it was impossible to travel from Kigali to Gikomero around 12 April 1994, because the roads leading there were impassable

due to fierce fighting. The Appellant's main argument is that the evidence of the seven witnesses, assessed in its entirety, showed that it was impossible to travel between Kigali and Gikomero between 7 and 17 April 1994. The Appeals Chamber recalls that, in the present case, the issue is not the possibility of travel as such, but the Appellant's presence in Gikomero on 12 April 1994. The Appellant could only succeed with this ground of appeal if he demonstrated that no reasonable trier of fact could have found, taking into account the competing evidence concerning his presence in Gikomero, his presence in Kigali, and the road conditions between the two, that the Prosecution had proved beyond a reasonable doubt that he was present in Gikomero when the crimes were committed. In the view of the Appeals Chamber, the Appellant merely tries to replace the Trial Chamber's assessment of the evidence with his own, without showing that the Trial Chamber's assessment was unreasonable. Accordingly, this ground of appeal is rejected.

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

28. First, the Appellant argues that there were so many errors and inconsistencies in Witness GEK's account of the events in Gikomero Commune that it was patently unreasonable for the Trial Chamber to rely on her testimony in finding that the Appellant had distributed weapons. After considering the parties' submissions, the Appeals Chamber concludes that the discrepancies in Witness GEK's testimony do not, either individually or collectively, so undermine her credibility as to require a reasonable Trial Chamber to discount her testimony. The Appeals Chamber notes that on the critical elements of her testimony against the Appellant, Witness GEK's testimony was unwavering: the Appellant came to her house shortly after the crash of President Habyarimana's plane, he rebuked the men he met there for not yet having started to kill Tutsis, he told them that their Tutsi wives should be killed if they posed any problem, and he distributed weapons for them to use in the coming massacre. Then, on the day of the massacre, the Appellant came by Witness GEK's house with a truckload of *Interahamwe* and headed toward the encamped refugees at Gikomero Parish Compound, after which she heard gunshots and noise for roughly half an hour. In the final analysis, the need to defer to the Trial Chamber on issues of credibility, particularly given the importance of witness demeanor, leads the Appeals Chamber to hold that these inconsistencies do not make it unreasonable for the Trial Chamber to have credited Witness GEK's evidence.

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

30. As to the first point, the Appeals Chamber finds that the Appellant's submission is unavailing. The mere fact that Witnesses GPK and Xaviera Mukaminani did not witness or hear about the arms distribution does not mean that such a distribution of arms could not have occurred. Moreover, as discussed in the Judgement, Witness EM's credibility was so badly damaged during cross-examination that it was not unreasonable for the Trial Chamber to discount her testimony entirely.

31. As for the allegation that Witness GEK was not in Gikomero at the relevant time, the Appeals Chamber notes that, even if taken at face value, neither Witness EM's nor Xaviera Mukaminani's testimony rules out the possibility that Witness GEK was in Gikomero at the time of the alleged weapons distribution. Witness EM's testimony acknowledges, at a minimum, that Witness GEK was in Gikomero on 6 April 1994, and Mukaminani's testimony was simply that she did not see Witness GEK in Gikomero during that time. Equally important, as already mentioned, Witness EM's credibility was badly damaged on cross-examination. Accordingly, the Appeals Chamber finds that it was not unreasonable for the Trial Chamber to give credence to Witness GEK's assertion that she was in Gikomero on the date of the alleged weapons distribution.

32. The Appellant has raised additional arguments in order to demonstrate that Witness GEK was an untrustworthy witness. For the reasons set out in the Judgement, the Appeals Chamber dismisses these arguments.

33. Finally, in addition to considering the various challenges to Witness GEK's testimony individually, the Appeals Chamber has considered whether, in the aggregate, the Appellant's contentions cast such doubt on Witness GEK's credibility as to render the Trial Chamber's reliance on her testimony unreasonable. The Appeals Chamber concludes that the principle of deference to the Trial Chamber on issues of fact, and particularly on questions involving the in-person evaluation of demeanour and credibility, must prevail. There is every indication that the Trial Chamber engaged in a careful and discerning process of genuinely seeking to determine the credibility of each witness on a case-by-case basis. While the Appellant has presented substantial reasons in support of his arguments relating to Witness GEK, the Appeals Chamber cannot find that it was unreasonable for the Trial Chamber to reach the opposite conclusion. Accordingly, the Appellant's submissions relating to Witness GEK are dismissed.

34. In grounds of appeal 3, 10, 13 and 14, as well as partially in other grounds, the Appellant made submissions relating both to the Trial Chamber's assessment of his alibi evidence and to the Trial Chamber's finding on his presence at the Gikomero Parish Compound. In the view of the Appeals Chamber, however, both issues are inextricably interrelated: if the Trial Chamber erred in rejecting the Appellant's alibi evidence, this would have an influence on the examination of the Trial Chamber's finding on his presence at the Gikomero Parish Compound, and vice versa. For this reason, the grounds of appeal related to the Trial Chamber's assessment of the alibi evidence and the finding on the Appellant's presence at the Gikomero Parish Compound are considered together in the Judgement.

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

36. The Appeals Chamber has admitted additional evidence from two witnesses, Witnesses GAA and GEX, with regard to the Appellant's presence at the Gikomero Parish Compound. The Appeals Chamber heard these witnesses together with two witnesses called in rebuttal, Witnesses GAG and GEK. Witness GAA testified before the Trial Chamber that he had seen the Appellant at the Gikomero Parish Compound on 12 April 1994. In fact, the Trial Chamber held that he was one of the three witnesses who had prior knowledge of the Appellant and were therefore capable of identifying him when he arrived at the compound. During the evidentiary hearing before the Appeals Chamber, Witness GAA testified that he had lied during trial when he stated that he had been at the Gikomero Parish Compound and that he had seen the Appellant there. The Appeals Chamber notes that Witness GAA was consistent for many years in his statements that he had been at the Gikomero Parish in 1994, and that he had seen the Appellant there. As explained in the Judgement, the Appeals Chamber finds that Witness GAA's recantation during the evidentiary hearing in May 2005 is not credible. Thus, the Appeals Chamber concludes that Witness GAA's additional evidence could not have been a decisive factor in reaching the decision at trial. Because of the consistency of his earlier statements, and the corroboration by other witnesses, a reasonable trier of fact could still rely on Witness GAA's trial evidence.

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

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

39. For the reasons set out in the Judgement, the Appeals Chamber did not consider the Prosecutor's Filing of Additional Information relating to the rebuttal testimony of Witness GAG.

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

41. In addition, the Appellant takes issue with the Trial Chamber's finding that the evidence of the identification witnesses was corroborated by the testimony of a number of witnesses who had heard the name of the Appellant when he arrived at Gikomero. The Appeals Chamber finds that the Trial Chamber was aware of the specific difficulties which have to be taken into account for the assessment of the mere shouting of "Kamuhanda". Therefore, a reasonable Trial Chamber

could, based on a free assessment of the evidence before it, come to the conclusion that the evidence of these witnesses corroborated the identification of the Appellant.

42. As to the error of fact, the Appellant submits that the three identification witnesses were unreliable, and that no reasonable trier of fact could have relied on their testimony that he was present at the Gikomero Parish Compound because their evidence was inconsistent as to the material facts. For the reasons set out in the Judgement, the Appeals Chamber concludes that a reasonable trier of fact could rely on the trial testimony of Witnesses GAF, GES, and GAA regarding the Appellant's identification and his participation in the massacre.

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

44. Under his fourteenth ground of appeal, the Appellant submits that the Trial Chamber committed an error of fact occasioning a miscarriage of justice when it dismissed Defence evidence related to his presence at Gikomero which raised doubt about his guilt. The Trial Chamber emphasized repeatedly that it relied on the evidence in its entirety to support its finding that the Appellant was present at the Gikomero Parish Compound on 12 April 1994 and that he initiated the attack on the refugees assembled there. These findings were supported by evidence from a number of direct and corroborative witnesses, whereas none of the Defence witnesses was present during the initial phase of the attack. The Appellant has not shown that the Trial Chamber committed an error occasioning a miscarriage of justice in its assessment of the evidence. The Appeals Chamber therefore rejects the submissions concerning the Appellant's presence at Gikomero on 12 April 1994.

45. Under his final ground of appeal, the Appellant submits that should the Appeals Chamber decide not to overturn his conviction on the basis of the foregoing grounds of appeal, it should revise the sentences imposed by the Trial Chamber and sentence him to a term of imprisonment of five years. In the view of the Appeals Chamber, the Appellant has failed to show that the Trial Chamber committed any error in sentencing him as it did. The Appeals Chamber's decision to vacate the findings that the Appellant instigated and aided and abetted genocide and extermination does not require the imposition of a lesser sentence.

III. THE DISPOSITION

46. I will now read out in full the operative paragraphs of the Appeals Chamber's Judgement, that is the Disposition. Mr. Kamuhanda, will you please stand.

47. **THE APPEALS CHAMBER,**

PURSUANT to Article 24 of the Statute and Rule 118 of the Rules;

NOTING the written submissions of the parties and their oral arguments presented at the hearing on 19 May 2005;

SITTING in open session;

VACATES the Appellant's convictions for instigating genocide and extermination under Counts 2 and 5, respectively;

VACATES, Judge Shahabuddeen dissenting, the Appellant's convictions for aiding and abetting genocide and extermination under Counts 2 and 5, respectively;

AFFIRMS, Judge Weinberg de Roca dissenting, the Appellant's convictions for genocide and extermination as a crime against humanity pursuant to Article 6(1) of the Statute;

DISMISSES, Judge Weinberg de Roca dissenting, the appeal in all other respects;

AFFIRMS, Judge Weinberg de Roca dissenting, the sentence imposed by the Trial Chamber;

ORDERS, pursuant to Rule 101(D) of the Rules, that credit shall be given to the Appellant for the period already spent in detention from 26 November 1999;

RULES that this Judgement shall be enforced immediately pursuant to Rule 119 of the Rules;

ORDERS, in accordance with Rules 103(B) and 107 of the Rules, that Jean de Dieu Kamuhanda is to remain in the custody of the Tribunal pending his transfer to the State in which his sentence will be served.

48. Mr. Kamuhanda, you may be seated. I now request the Registrar to please deliver copies of the Judgement to the parties in this case. This hearing of the Appeals Chamber of the International Criminal Tribunal for Rwanda stands adjourned.