



SPECIAL TRIBUNAL FOR LEBANON

المحكمة الخاصة بلبنان

TRIBUNAL SPÉCIAL POUR LE LIBAN

THE APPEALS CHAMBER**SPECIAL TRIBUNAL FOR LEBANON**

Case No: STL-18-10/MISC.2/AC

Before: Judge Ralph Riachy, Vice President
Judge David Baragwanath
Judge Afif Chamseddine
Judge Daniel David Ntanda Nsereko

Registrar: Mr Daryl Mundis

Date: 20 December 2019

Original language: English

Classification: Public - with confidential annex

THE PROSECUTOR
v.
SALIM JAMIL AYYASH

APPLICATION TO RECONSIDER ‘DECISION ON “APPEAL AGAINST DECISION OF PRESIDENT CONVENING TRIAL CHAMBER II”’ BASED ON THE DISQUALIFICATION OF JUDGE CHAMSEDDINE

Prosecutor:
Mr Norman Farrell

Head of Defence Office:
Ms Dorothée Le Fraper du Hellen



BACKGROUND

1. On 26 November 2019, I appealed¹ the decision of the President of the Special Tribunal for Lebanon, Judge Ivana Hrdličková, on 6 November 2019, to convene Trial Chamber II.² On 13 December 2019, the Appeals Chamber, by virtue of a division of two-two, dismissed the appeal.³ Two judges, the Vice-President, Judge Riachy, and Judge Chamseddine were of the view that the appeal was inadmissible,⁴ while the two international judges, Judge Baragwanath and Judge Nsereko held that the Appeals Chamber had the jurisdiction to hear the appeal.⁵

RECONSIDERATION

2. I now seek reconsideration of the decision under Rule 140 of the Special Tribunal's Rules of Procedure and Evidence, under which a chamber 'may' by request or *proprio motu* 'reconsider a decision, other than a judgement or sentence, if necessary to avoid injustice'.

3. I do so with the greatest reluctance. Consistent, however, with my oath of office, and the requirement that I act both according to law and my conscience, I have no other choice. It is my duty as an independent judge to do so.

4. I therefore place the following information before the Appeals Chamber, namely that Judge Chamseddine should have excused himself under Rule 25 (A) as he had an interest in the case. His failure to do so meant that the Appeals Chamber was invalidly constituted and it must therefore reconsider the matter to avoid injustice. By this filing I am also inviting Judge Chamseddine to seek his own recusal under the rule.

5. There are three principal reasons why I did not make an application for the judge's disqualification before the delivery of the decision, after work hours, on Friday 13 December 2019. The first is that Judge Chamseddine should have made an application to seek to excuse himself, meaning that I should not have had to make it myself, and I was, until the decision was delivered, anticipating that he would do this. I was awaiting his application.

¹ STL, *Prosecutor v. Ayyash*, STL-18-10/MISC.2/AC, F0001, Appeal Against Decision of President Convening Trial Chamber II, 26 November 2019.

² STL-18-10/I/PRES, F0056, Order Convening Trial Chamber II, 6 November 2019.

³ STL-18-10/MISC.2/AC, F0006, Decision on "Appeal Against Decision of President Convening Trial Chamber II", 13 December 2019.

⁴ Joint Opinion of Judges Ralph Riachy and Afif Chamseddine.

⁵ Opinion of Judge David Baragwanath, Opinion of Judge Daniel David Ntanda Nsereko.

6. The second is that I believe that the Registrar, Mr Daryl Mundis, who witnessed everything that occurred, should have brought the relevant information to the Appeals Chamber's attention before it issued its decision. To this end, on Wednesday 4 December 2019, I wrote to him informing him that in my view he had a duty to bring the matter to the Appeals Chamber's attention. On Friday 6 December 2019, he told me that he was going to respond to my email. However, I had not received a response from the Registrar at the time the decision was filed a week later, and he responded to me only on Wednesday 18 December 2019.

7. The Registrar witnessed the entirety of Judge Chamseddine's actions giving rise to this application, as set out in the confidential annex.⁶ The Registrar brought the matters to my attention and sought my assistance to prevent an intervention by a judge with a witness who was testifying in the case STL-11-01/T/TC, *Prosecutor v. Ayyash, Badreddine, Merhi, Oneissi and Sabra*. I also reported the incident to the then President, Judge David Baragwanath, who was then absent from the tribunal, upon his return.

8. Thirdly, I was unaware of when the Appeals Chamber's decision was to be rendered, as I was neither entitled to, nor did receive, advance notice of this. In these circumstances, I could have been expected to rely upon (1) Judge Chamseddine seeking to excuse himself and or (2) the Registrar placing the relevant material information before the Appeals Chamber in relation to (1). Additionally, the decision, at paragraph 9, states that the Registrar, on 29 November 2019, informed the Appeals Chamber that he did not wish to make observations. I became aware that he had been asked whether he wanted to do so, only when I read the decision.

9. Finally, the injustice to me as the appellant in having my appeal determined by an invalidly constituted bench is obvious. Due process must be followed at every step of judicial proceedings. This form of transparency and accountability is vital to the integrity of the course of justice; it provides the checks and balances that are necessary for public confidence in judicial institutions.

10. In this respect I quote from the preface to the *Bangalore Principles of Judicial Conduct*, which states,⁷

⁶ I have no objection to the affidavit being reclassified as 'public' at the appropriate time.

⁷ Preface to "*Commentary on the Bangalore Principles of Judicial Conduct*", The Judicial Integrity Group, March 2007.

A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments on its rights and freedoms under the law. These observations apply both domestically within the context of each nation State and globally, viewing the global judiciary as one great bastion of the rule of law throughout the world. Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.

11. In case Judge Chamseddine does not seek to excuse himself under Rule 25 (A), I will file an application before the President under Rule 25 (C) seeking his disqualification.

OTHER MATTERS

12. Judges Baragwanath and Nsereko, in their separate opinions, stated that I should be asked to provide the informal notes of the meeting between the President, Registrar and three Trial Chamber judges that occurred on Tuesday 5 November 2019.

13. As a further explanation, I drafted the notes, with the input of Judges Nosworthy and Braidy. They were then sent to the Registrar, who informed me, on 20 November 2019, that he had nothing to add to them. I then sent them, the same day, to the President, copying the email to the Registrar, and Judges Nosworthy and Braidy. The President neither responded to the email nor suggested any changes to the notes of the meeting to which the other four participants had agreed. I will of course provide a sworn affidavit to this effect.

14. Further, the Registrar informed me that he found out about the President's decision to compose a second Trial Chamber only fifteen minutes before the meeting on 5 November 2019. In any proceedings following a successful application for reconsideration, it is respectfully suggested that the Appeals Chamber obtain all relevant communications between the President and her staff with the United Nations Office of Legal Affairs, the Special Tribunal's Management Committee and with the two alternate judges.

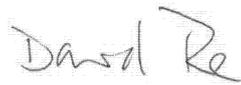
15. It is only in viewing this material that the Appeals Chamber can have a full picture of what occurred here and thus do justice to my appeal if the application for reconsideration is successful.

RELIEF SOUGHT

Accordingly, the Appeals Chamber is respectfully requested to:

- (1) Reconsider my appeal with a lawfully constituted bench once a panel established under Rule 25 (C) has decided the application in relation to Judge Chamseddine,
- (2) Take all necessary procedural steps to determine the issue, including those identified above; and
- (3) Grant the appeal.

Leidschendam,
The Netherlands
20 December 2019



Judge David Re
Presiding Judge
Trial Chamber

