

ICTR-95-1-T

(519-514)

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Kasfah

Case No. ICTR-95-1-T
Case No. ICTR-96-10-T

UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER 2

OR: ENG

Before: Judge William H. Sekule, Presiding Judge
Judge Yakov Ostrovsky
Judge Lennart Aspegren

Registry: Mr. Jean-Pelé Fomété

Decision of: 21 March 1997

THE PROSECUTOR
VERSUS
OBED RUZINDANA

Case No. ICTR-95-1-T
Case No. ICTR-96-10-T

ICTR
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DECISION ON PRELIMINARY MOTIONS FILED BY THE DEFENCE

The Office of the Prosecutor:

Mr. Jonah Rahetlah
Ms. Brenda-Sue Thornton
Mr. Charles Tate

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The Counsel for the Accused:

Mr. Pascal Besnier

Case No. ICTR-95-1-T
Case No. ICTR-96-10-T

THE TRIBUNAL,

SITTING AS Trial Chamber 2 of the International Criminal Tribunal for Rwanda ("the Tribunal"), composed of Judge William H. Sekule as Presiding Judge, Judge Yakov Ostrovsky and Judge Lennart Aspegren;

CONSIDERING the first indictment of 22 November 1995 submitted by the Prosecutor against Obed Ruzindana and confirmed on 28 November 1995 by Judge Navanethem Pillay, subsequently amended on 6 May 1996 by authorisation of that same Judge (Case No. ICTR-95-1-T), and the second indictment of 17 June 1996 submitted by the Prosecutor and confirmed on 21 June 1996 by Judge Tafazzal H. Khan (Case No. ICTR-96-10-T);

CONSIDERING the warrants of arrest and orders for surrender signed by Judge Pillay on 28 November 1995 in the first indictment, and by Judge Khan on 21 June 1996 in the second indictment;

CONSIDERING that the accused was arrested in Nairobi by the Kenyan Authorities on 20 September 1996 on the basis of the warrant of arrest issued on 28 November 1995 by the confirming Judge in Case No. ICTR-95-1-T;

CONSIDERING the initial appearance of the accused on 29 October 1996;

CONSIDERING the preliminary motions submitted by the Defence and received by the Tribunal on Monday 30 December 1996 raising a number of objections against the form of the indictment and against the Prosecutor's joinder of the accused in Case No. ICTR-95-1-T and also in Case No. ICTR-96-10-T, and seeking on this basis an annulment of the two indictments against Obed Ruzindana and, consequently, the release of the accused;

CONSIDERING the Prosecutor's response of 17 February 1997 to the preliminary motions filed by the Defence;

CONSIDERING the Defence Counsel's rejoinder transmitted on 8 March 1997 to the Prosecution's response mentioned above;

CONSIDERING the oral submissions of the parties during the hearing on 14 March 1997 of the Defence Counsel's preliminary motions;

CONSIDERING Rules 72 and 73 of the Tribunal's Rules of Procedure and Evidence ("the Rules"); and

MINDFUL of the Rights of the Accused as provided for in the International Covenant on Civil and Political Rights and other international human rights instruments;

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AFTER HAVING DELIBERATED:

WHEREAS the Defence Counsel's preliminary motions were received by the Tribunal on Saturday 30 December 1996, two days after the expiration on 28 December 1996 of the 60 day time-limit from the initial appearance pursuant to Rule 73(B) of the Rules;

WHEREAS the Tribunal is of the opinion that, given the relatively short transgression by the Defence of the time-limit and the fact that the Defence Counsel has still not received all relevant supporting material from the Prosecutor, there would have been a good cause to permit the Defence Counsel to file and to have heard his preliminary motions, if he had so required;

WHEREAS, for these reasons, the Tribunal has chosen to except, in this particular case, the Defence Counsel's delay in submission of his preliminary motions and is, consequently, ready to hear this motion on its merits as if it were duly submitted;

A. On the Matter of Defects in the Form of the Indictment

WHEREAS, first, the Defence Counsel, in his written and oral submissions, claimed that the French version of the amended indictment of 29 April 1996 in Case No. ICTR-95-1-T, which was the only version of the indictment actually transmitted to the Defence, was neither signed nor dated, for which reason the Defence Counsel contends that this indictment is patently defective and in breach of Rule 47 of the Rules;

WHEREAS, secondly, the Defence Counsel has pointed out that, since the warrant of arrest which formed the legal basis for the arrest of his client was dated 28 November 1995, five months before the amended indictment of 29 April 1996, the arrest of Obed Ruzindana was legally unfounded, as the amended indictment of 29 April 1996 could not be applied retrospectively;

WHEREAS, finally, the Defence Counsel maintains that the warrant of arrest following the confirmation of the first indictment in Case No. ICTR-95-1-T was not accompanied by a statement on the rights of the accused and therefore is in breach of Rule 55 of the Rules;

On the Defence Counsel's first contention:

WHEREAS the Tribunal finds that the Deputy Prosecutor's omission of his signature and the correct date on the French version of the amended indictment transmitted to the Defence Counsel in Case No. ICTR-95-1-T appears to be a regrettable omission;

WHEREAS, however, the Tribunal, in considering the English version of the amended indictment, which was duly signed by the Prosecutor on 29 April 1996, and the disputed French version of that same document, is of the opinion that this omission does not amount to defects warranting invalidation of either version, as the operative elements in the English and the French versions

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were identical and remained unaffected;

On the Defence Counsel's second contention:

WHEREAS, furthermore, the Tribunal is of the opinion that the Order of 6 May 1996 by the confirming Judge, amending Count 1 of the first indictment so as to expand the relevant time-frame for planning of the crime included in that count, and otherwise lifting the Order of 28 November 1995 for non-disclosure to the public and the media of the names of all accused, was a diligent and practical way of granting leave to the Prosecutor to amend the indictment in accordance with Rule 50 of the Rules;

WHEREAS the first indictment of 22 November 1995 was only amended but not repealed by the Order of 6 May 1996 by the confirming Judge, for which reason the warrant of arrest of 28 November 1995 would hence refer to the first indictment as subsequently amended by the said order;

On the Defence Counsel's last contention:

WHEREAS the first indictment of 22 November 1995, the warrant of arrest of 28 November 1995 and the order for surrender pertaining thereto, as well as a statement of the Rights of the Accused issued by the Tribunal, were duly served by the Registrar on the Kenyan Government on 12 December 1995, while the amended first indictment of 29 April 1996 was duly served by the Registrar on the Kenyan Government on 14 May 1996 in accordance with Rule 55(A) and 55(B);

WHEREAS the subsequent enforcement of warrants of arrest duly served on national authorities by the Registrar in accordance with the Rules, as well as the physical arrest of persons indicted by the Tribunal, are primarily matters falling within the realm of these authorities.

For these reasons,

the Tribunal finds no legal or procedural reasons to object to the form of the indictment or to the order issued by the confirming Judge to grant leave to the Prosecutor to amend the indictment and, consequently, cannot grant relief to the Defence Counsel's request for annulment of the two indictments brought against the accused and for his release;

B. On the Matter of Extending the Time-limit for Submission of Preliminary Motions on Exclusion of Evidence Obtained from the Accused or Having Belonged to Him

WHEREAS the Defence Counsel, in his written and oral submissions, indicated that the accused wishes to reserve his right to file a preliminary motion concerning exclusion of evidence obtained from or having belonged to him, even after the expiration of the 60 day limit, since the accused

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claims that he has still not received from the Prosecutor all the material which will enable him to decide whether or not to seek exclusion of such evidence;

WHEREAS Rule 73(C) stipulates that failure to submit within the time-limit prescribed in Rule 73(B) shall constitute a waiver of the right to file preliminary motions, but that the Tribunal may nevertheless grant relief from the waiver if the accused shows a good cause considered on the basis of the facts and circumstances of each single case;

WHEREAS, anyway, the Tribunal finds that failure of the Prosecutor to hand over the supporting material in due time to the Defence cannot and indeed should not exhaust the right of the Defence to file a preliminary motion;

WHEREAS, consequently, the parties may file at any time such motions as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial pursuant to Rule 54 of the Rules;

C. On the Matter of the Joinder of the Accused in both Indictments

WHEREAS the Defence Counsel, in his oral and written submissions, argued that the joinder of accused in each of the indictments would necessarily compel the Prosecutor to simultaneously try all the accused persons together under each indictment since, after a possible conviction of Obed Ruzindana, any exculpatory evidence subsequently brought forward in defence of the other co-accused persons, which was not made available during the proceedings against Obed Ruzindana, might cause injustice and deny him the right to a fair trial;

WHEREAS, however, the Tribunal recalls that the Defence retains the right at all times to have the Tribunal's judgement against his client reviewed if new exculpatory facts or evidence have been discovered, which were not known at the time of proceedings before the Tribunal;

WHEREAS, in the Tribunal's opinion, the practical consequence of the Defence Counsel's contention would appear to be that all accused could only be indicted and tried individually, which is clearly against the intention of Rule 48 of the Rules;

WHEREAS, for these reasons, the Tribunal cannot sustain the Defence Counsel's objection that, unless they can all be tried simultaneously, joinder of the accused in one indictment, and between the accused in two indictments, is in violation of Rule 48 of the Rules;



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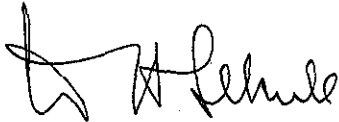
**FOR THESE REASONS,
THE TRIBUNAL**

DECIDES to hear the Defence Counsel's preliminary motions, filed on 30 December 1996, on their merits;

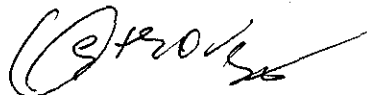
REJECTS the formal objections made by the Defence against the two indictments brought against the accused; and

HOLDS that, pursuant to Rule 48 of the Rules, the joinder of accused does not in itself presuppose that all accused must be tried together at the same time, and that, in any case, Article 25 of the Statute and Rule 120 of the Rules do provide for review of judgements where a new fact has been discovered which was not known at the time of proceedings before a Chamber.

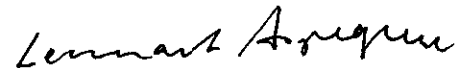
Arusha, 21 March 1997



William H. Sekule
Presiding Judge



Yakov Ostrovsky
Judge



Lennart Aspegren
Judge

Seal of the Tribunal

