

ICTR-95-1-T  
(827-822)  
16:06:98

827  
J. Kiyeyu

Case No. ICTR-95-1-T

UNITED NATIONS  NATIONS UNIES

ICTR  
CRIMINAL REGISTRY  
RECEIVED

1998 JUN 16 P 1:38

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

OR:ENG

Before: Judge William H. Sekule, Presiding Judge  
Judge Yakov A. Ostrovsky  
Judge Tafazzal H. Khan

Registry: Mr. John Kiyeyeu

THE PROSECUTOR  
VERSUS  
CLEMENT KAYISHEMA  
OBED RUZINDANA  
Case No. ICTR-95-1-T

---

**DECISION ON THE PROSECUTION MOTION FOR AN ORDER REQUESTING  
COMPLIANCE BY THE DEFENCE WITH RULES 67(A)(ii) and 67 (C) OF THE RULES**

The Office of the Prosecutor:

Mr. Jonah Rahetlah  
Ms. Brenda- Sue Thornton  
Ms. Holo Makwaia

The Counsel for the Accused:

Mr. Andre Ferran (Counsel For Clement Kayishema)  
Mr. Pascal Besnier (Counsel for Obed Ruzindana)



Case No. ICTR-95-1-T

SITTING AS Trial Chamber II of the International Criminal Tribunal for Rwanda (“the Tribunal”), composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan;

CONSIDERING that the initial appearance of the accused Clement Kayishema, in the instant case took place on 31 May 1996 and that of the accused, Obed Ruzindana, on 29 October 1996; and hearing on merits commenced on 11 April 1997;

NOTING THAT the Prosecutor closed her case on 13 March 1998;

CONSIDERING THAT the Tribunal is currently hearing evidence for the Defence;

BEING SEIZED of the Prosecutor’s motion of 12 March 1998 requesting the Trial Chamber to order the Defence to comply with the provisions of rules 67(A)(ii) and 67(C) of the Rules of Procedure and Evidence (“the Rules”);

TAKING INTO CONSIDERATION THAT by virtue of a letter dated 21 April 1998, the Defence Counsel for Obed Ruzindana had submitted to the Prosecutor a list of the witnesses who would be deposed on behalf of the accused for the defence of alibi;

TAKING INTO ACCOUNT the response filed by the Defence Counsel for Clement Kayishema on 23 April 1998 on the major ground that due to various amendments by the Prosecutor and the disparate materials provided by the Prosecution witnesses, it was impossible for Kayishema to know how to organise his defence within the framework established by rule 67(A)(ii) of the Rules;

MINDFUL OF the imperative need to adhere to the provisions of the Statute of the Tribunal (“the Statute”) and the Rules made thereunder;

UNDERSCORING the need for equal participation by both parties in search for the truth by adhering to the established procedure;

CONSIDERING that the Prosecutor had withdrawn a similar motion against Obed Ruzindana;

TAKING INTO ACCOUNT the requirements of rule 67(A)(ii) of the Rules;

HAVING HEARD both parties on 12 May 1998;



Case No. ICTR-95-1-T

## PLEADINGS BY THE PARTIES

### The Prosecutor:

urged the Trial Chamber to order the Defence to adhere to the provisions of Rule 67(A) and (C) stated:

(a) that the Defence is obliged to notify the Prosecutor of its intention to offer the Defence of alibi, as early as practicable but in any event prior to the commencement of the trial;

(b) that the notification of the defence of alibi must specify the place(s) of which the accused alleges to have been present at the time of the alleged crime, the names and addresses of the witnesses and any other evidence upon which the accused intends to rely to establish that alibi;

(c) that pursuant to rule 67(B) of the Rules, if the Defence intends to rely upon any special defence such as diminished responsibility or lack of responsibility, the Defence must specify the names and addresses of witnesses and any other evidence the accused intends to use to establish these facts;

(d) that if the Prosecutor made a request pursuant to rule 66(b) of the Rules, she would be entitled to inspect any book, documents, photographs and tangible objects in the custody or control of the Defence and which the Defence intends to use as evidence in the trial;

(e) that it was not true that the Prosecutor proceeded on multiple indictments or that she had not fulfilled her obligation to disclose;

### Response By The Defence Counsel of Dr. Clement Kayishema:

In response, the Defence Counsel stated:

(a) that their concept of what a Defence should be was divergent from that of the Prosecutor. Consequently, both parties did not have the same concept of the principles which should govern the search for the truth;

(b) that the Prosecutor could not claim that a great deal of time was being lost and to do so would be to exhibit some kind of indecency on her part because the motion was not brought in regard to the violation of rule 67 of the Rules;

(c) that the Defence has faced many obstacles such as operating with a single Counsel who was required to come and stay in Arusha for several months, leaving behind his family and his chambers. Further, that the Defence had about one tenth of the Prosecution's

*mtion/kaysh/alibi/12/5/98*



Case No. ICTR-95-1-T

resources;

(d) that the Office of the Registrar was also continually placing obstacles before the Defence;

(e) that the Prosecutor could not allege that the arguments of the Defence were ridiculous and frivolous because the Defence has always come to the rescue of the Prosecutor yet the Prosecutor had not reciprocated;

(f) that because the Prosecutor had presented witnesses who had testified in a way different from how they were expected to testify, the Defence could not counter their allegations;

(g) that although the legislature intended that there should be reciprocity of disclosure, the Defence could not make their disclosure before knowing what the Prosecutor had to submit to prove the guilt of the accused;

(h) that the rights of the accused were in danger since the accused had not been told of the charges against him and given the fact that not everything was disclosed;

**Reply by the Office of the Prosecutor:**

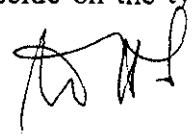
The Office of the Prosecutor stated:

(a) that Counsel for Mr. Ruzindana had complied with rule 67 in so far as rule 67 of the Rules specifically mentions the defence of alibi and any special defence but not of general evidence.

(b) that in a written response to the Prosecution dated 26 June 1997, the Defense Counsel for Dr. Kayishema recognized, at least, the fact that the Prosecution had provided all the documents;

(c) that the problems complained of by the said Defence Counsel were problems that were posterior to the initial appearance and the Prosecution would not be expected to respond to those observations;

(d) that at the time of the initial appearance of the accused, the Defense of Dr. Kayishema had received all types of information to enable them to decide on the type of defence they would be pleading;



Case No. ICTR-95-1-T

**DELIBERATIONS:**

The Trial Chamber has carefully considered the submissions of both parties and has reached the decision below upon reasons shown thereunder.

We note that the aim of disclosure of either the defence of alibi or special defence is to enable the other party to prepare its case and to controvert evidence mentioned by the Defence. We are also aware of rule 67(B) of the Rules which tend to nullify the requirement for the Defence to disclose its intention to rely upon the defences of alibi and special defence.

As the Defence is now presenting their evidence, if the defence of alibi or special defence is contemplated, then this is an opportune moment for the Defence to disclose. Disclosure at a later stage will vitiate the spirit of the Statute.

The Prosecutor, it is noted, is entitled to insist that the defence of Dr. Clement Kayishema discloses its intention to rely upon the defence of alibi or special Defence as stipulated in Rule 67(A) (i) and (ii) of the Rules.

**HENCE FOR ALL THE ABOVE STATED REASONS:**

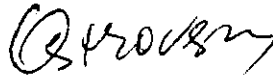
The Tribunal is of the considered view that the Defence Counsels for Dr. Clement Kayishema should make the necessary disclosure immediately if they intend to rely upon the defence of alibi or special defence.

**The Prosecution's motion is hereby GRANTED.**

Signed at Arusha, 15 June 1998



William H. Sekule  
Presiding Judge



Yakov A. Ostrovsky  
Judge



Tafazzal H. Khan  
Judge

SEAL OF THE TRIBUNAL



mtion/kaysh/alibi/12/5/98