

ICTR-97-32-I
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Case No. ICTR-97-32-I

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

OR:FRE.

Before Judge Laity Kama, Presiding Judge
Judge Tafazzal H. Khan
Judge Navanethem Pillay

Registry: Mr. John M. Kiyeyeu

Decision of: 07 July 1998

**THE PROSECUTOR
VERSUS
GEORGES HENRI YVON JOSEPH RUGGIU**

Case No. ICTR-97-32-I

**DECISION ON THE DEFENCE MOTION FOR RESTITUTION OF
PERSONAL EFFECTS**

The Office of the Prosecutor:

Mr. James Stewart

Counsel for the Accused:

Mr. Mohamed Aouini

Mr. Jean- Louis Gilissen

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Case No. ICTR-97-32-I

THE INTERNATIONAL TRIBUNAL FOR RWANDA(the “ TRIBUNAL”)

SITTING AS Trial Chamber I , composed of Judge Laity Kama, Presiding , Judge Tafazzal H. Khan and Judge Navanethem Pillay ;

CONSIDERING the decision confirming the indictment against the accused Georges Henri Yvon Joseph Ruggiu rendered by judge Lennart Aspegren on 9th October 1997 to the effect that there is sufficient evidence to provide reasonable grounds for believing that the accused has committed crimes within the jurisdiction of the tribunal;

CONSIDERING the motion filed made by the Defence on 14 may 1998 seeking an order for restitution of personal effects seized from the accused during his arrest by Kenyan Criminal Investigation Department officials, accompanied by investigators from the office of the Prosecutor on 23 July 1997 in Mombasa, Kenya;

HAVING REGARD to the Prosecutor’s written and oral response to the Defence motion made on 25 June 1998 before the Chamber;

CONSIDERING the provisions of rule 66 of the Rules regarding disclosure of evidence by the Prosecutor;

HAVING HEARD the parties on 25 June 1998;

THE DEFENCE ARGUMENTS :

In the Written motion the defence argues ;

(1) that the Prosecutor having received on 24 October 1997, a request for disclosure in accordance with rule 66(B) of the Rules, failed without any just cause to comply with the request for restitution of the personal effects namely;

- a small thick black note book containing prayers and addresses
- a large diary bound in leather or imitated leather (blue)
- an address book bound in leather or imitation leather (red)
- two large hard cover address books , containing an English-French- Swahili- Tamil- Urdu glossary.

(2)That during and after the arrest of the accused and seizure of the said items, no inventory was made;

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(3) That the Prosecutor's failure to disclose or restore the items on time is hindering preparation of the defence case and is a violation of both article 20 and rule 66(B) of the Rules as the personal effects are material for the preparation of the Defence case;

(4) That deprivation of the said items is done without any legitimate or useful basis and, besides causing delay in the final determination of this case, it is also tampering with the accused's right to a fair trial;

(5) That the Prosecutor should be ordered to return to the accused, within a period of eight days following the decision of this motion, all his personal effects notably a notebook, a large diary and three address books which were in the possession of the accused on the day of his arrest;

IN HIS ORAL SUBMISSION THE DEFENCE FURTHER ARGUED;

(6) That, whereas the Prosecutor served certified copies of the materials two days before the hearing of the motion, there has nevertheless been an irreparable delay in the preparation of the Defence case.

(7) That the failure to provide the accused with an inventory of the seized items and the long delay in disclosing copies of the items has resulted in a risk of losing evidence and this may cause damage to the substance of the defence case and prejudice to the rights of the accused.

(8) That the applicant cannot find all of his materials among the photocopies delivered by the Prosecutor and that deprives the applicant of information regarding all the documents, constituting an illegality and violation of the accused rights under article 20 (4) (b) of the Statute.

(9) That in as much as the motion is for restitution of the personal effects, copies of which were made available to the Defence two days prior to hearing this motion, the Defence is seeking an order declaring the seizure itself a nullity for want of making an inventory available to the Defence.

(10) That the seizure of personal effects of the accused was defective in form and deprives him of having a list of the objects seized thus denying him an opportunity of being able to denounce any loss or alteration or manipulation of those notebooks which are necessary for the preparation of his defence.

(11) That the motion for restitution of personal effects is based on the illegality of seizure which was a violation of rule 5 of the Rules of Procedure and Evidence of the Tribunal.

THE PROSECUTOR RESPONDED AS HEREUNDER:

- (a) The Prosecution conceded to being in possession of items which were seized from the accused on 23rd July 1997 during the accused's arrest in Mombasa, Kenya;
- (b) Argued that, the said items were seized under the provision of Article 17(2) of the Statute and rules 39(i) and 40(A)(ii) of the Rules which authorise the Prosecutor to take physical evidence in the course of investigation and preparation of an indictment;
- (c) That the contents of paragraph (a) and (b) above notwithstanding, on 18 June 1998 the Prosecutor did transmit through the office of the Registrar, for delivery to the accused, certified copies of the property requested in the present motion, originals of which have been retained for use during the trial of the accused ;
- (d) That under Rule 66(B) of the Rules of Procedure and Evidence, the Prosecutor has an obligation to make available to the Defence *for inspection*, books, documents and tangible objects in her custody and control which are material to the preparation of the Defence, or are intended for use by the Prosecutor as evidence at trial upon the Defence showing the materiality of the evidence and the Prosecutor is ready to comply with this obligation;
- (e) That Rule 66(B) does not place an obligation on the part of the Prosecutor to restore the said documents to the accused;
- (f) That on the strength of Rule 41 of the Rules, the Prosecutor has not violated any rights of the accused ;
- (g) That Rule 5 of the Rules of Procedure and Evidence can be invoked only if the act was inconsistent with the fundamental principles of fairness and has occasioned miscarriage of justice and cannot be invoked in this case as the seizure of the said properties was done under authority of the law
- (h) That certified copies of the personal effects requested by the applicant have been handed over for transmission to the Defence as such, the order sought by the Defence has been superseded making it necessary for the motion to be dismissed.
- (i) Article 17(2) of the Statute empowers the Prosecutor to take physical evidence in the course of her investigation the authority for which is also reflected in Rule 39(i) and 40(A)(ii) of the Rules, none of which require the Prosecutor to make an inventory for the accused thus, want of an inventory is not violative of any rule and cannot be said to be illegal as illegality must be based on the Articles of the statute or the Rules.

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- (j) That it is indeed the practice in international Criminal jurisdiction for an inventory to be made which will guarantee the integrity of the property seized and guarantee the rights of the accused. However, there is no provision under our Statute or the Rules which make it mandatory for the Prosecutor to do so thus failure to prepare an inventory cannot be said to have been illegal .
- (k) That as of today 25th June 1998, the applicant has been supplied with certified copies of the personal effects (which are secondary evidence) as requested and that , the originals are needed for trial.
- (l). That the applicant is at liberty to raise issues of admissibility of evidence under rule 95 of the Rules when the case will be at a trial stage and not at this pretrial stage when the personal effects are not before the Chamber .
- (m) That the Chamber cannot at this stage nullify the seizure as there is no sufficient legal basis to justify the order hence the motion should be dismissed;.

FROM THE DEFENCE AND PROSECUTION ARGUMENTS, THE FOLLOWING ISSUES MAY BE FRAMED, THESE ARE;

- (1) Whether the seizure can be declared to be a nullity for want of an inventory ?
- (2) If the answer to issue No.1 above is in the affirmative, what is the status of the personal effects seized as evidence ?
- (3) Does the disclosure of photocopies of the items seized amount to restitution of the personal effects ?
- (4) What remedies are available to the Defence ?

DELIBERATIONS

WHEREAS the Defence has invited the Chamber to rule that seizure of the applicant's personal effects was illegal under the provisions of rule 5 of the Rules of Procedure and Evidence and declare the exercise a nullity, and order the restitution of the seized property.

WHEREAS the provision of article 17(2) of the Statute and rules 39(1) and 40(A)(ii) authorise the office of the Prosecutor to take physical evidence in the course of investigation and preparation of an indictment which right was exercised by the Prosecutor;.

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NOTING THAT the Prosecutor has, as conceded by the Defence, disclosed certified photocopies of the personal effects after a long delay;

MINDFUL OF THE FACT THAT: there has been a long and unjustified delay in disclosing the evidence to the Defence by the Prosecutor;

TAKING NOTE of the fact that disclosure of the photocopies of the personal effects does not in any way amount to restitution of the personal effects;

UNDERSCORING the need for a balance between the rights of the Prosecutor and the Defence ;

UNDERSCORING the right of the Defence under Rule 66(B) to inspect the documents at the earliest opportunity to enable preparation of the Defence case;

BEING AWARE that there is a *lacuna* in our Statute and the Rules with regard to a mandatory requirement for an inventory to be made during seizure;

NOTING that although there is want of a mandatory specific legal provision for an inventory to be made , it does not justify the Prosecutor's action not to issue an inventory under the spirit of rule 5 of the Rules which requires parties to comply with general principles of fairness;

NOTING THAT the Prosecutor concedes to be aware of an internationally recognised practice of providing inventories during seizure;

**THE CHAMBER TAKING INTO ACCOUNT THE ABOVE REASONS
DECIDES AS HEREUNDER:**

- I. In view of the fact there are no rules providing for a mandatory requirement for making an inventory during seizure of property, the Chamber finds that the Prosecutor did not breach any specific article of the Statute or rule of the Tribunal by her failure to make an inventory and the items may be used as evidence;
- II. That the Prosecutor having now supplied certified photocopies of the personal effects to the Defence which however, does not amount to restitution, the Prosecutor is entitled to possess the original for trial purposes with leave for the defence to inspect them under the provision of Rule 66(B).
- III. In view of the *lacuna* in our Rules in respect of the provision of an inventory the seizure cannot be said to have been illegal.

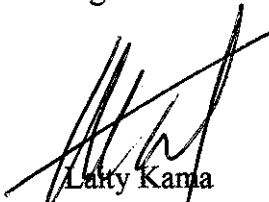
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- IV. The Chamber DIRECTS the Prosecutor that, in future ,under the spirit of rule 5 of the Rules should see to it that she prepares an inventory of properties seized during investigation which shall be signed by the suspect.
- V. In the circumstances of this case, the Prosecutor is directed to comply with IV above as soon as possible and return all original personal effects of the accused that are not needed for trial.

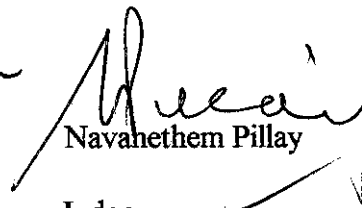
SAVE WHAT IS STATED HEREIN ABOVE.

The Motion is dismissed.

Signed at Arusha this 07 July 1998.


 Luty Kama
 Presiding Judge


 Tafazzal H. Khan
 Judge


 Navanethem Pillay
 Judge

(Seal of the Tribunal)