

UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

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EX
ICTR-95-1B-I
20 MARCH 2000
(657-654)

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Decision of: 20 March 2000

THE PROSECUTOR

v.

MIKA MUHIMANA

Case No. ICTR-95-1B-I

2000 MAR 20 P 4 29

ICTR
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**DECISION ON THE DEFENCE MOTION
FOR THE ANNULMENT OF THE INITIAL APPEARANCE**

The Office of the Prosecutor:

Charles Adeogun-Phillips
Wallace Kapaya
Boi-Tia Stevens

Counsel for the Accused:

Nyabirungu mwene Songa

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: <i>Dr. M. INANA K. M. Antoine</i>	
SIGNATURE: <i>[Signature]</i>	DATE: <i>21.03.2000</i>

INTRODUCTION

1. The International Criminal Tribunal for Rwanda (Tribunal), sitting today as Trial Chamber III, composed of Judges Lloyd George Williams, Presiding, Yakov Ostrovsky, and Pavel Dolenc, decide a defence motion to annul the initial appearance of Mika Muhimana (the Accused).
2. On 28 November 1995, Judge Pillay confirmed the indictment against the Accused.
3. On 26 October 1996, Judge Pillay ordered the arrest of the Accused in a warrant addressed to the Government of the United Republic of Tanzania.
4. On 8 November 1999, authorities arrested the Accused and transferred him to the United Nations Detention Facility in Arusha.
5. On 24 November 1999, the Accused appeared before this Trial Chamber for his initial appearance, pursuant to Rule 62 of the Tribunal's Rules of Procedure and Evidence (Rules). Duty Counsel, Jesse Kiritta, appointed and provided by the Tribunal, represented the Accused. Pursuant to Rule 62(iii), the Trial Chamber entered a not guilty plea on each count, as the Accused failed to enter a plea.
6. On 16 February 2000, the Accused, represented by Professor Nyabimungu mwene Songa, lead Defence Counsel appointed and provided by the Tribunal, filed his "Motion for the Annulment of the Initial Appearance" (Motion) under Rule 73.
7. On 28 February 2000, the Prosecution filed its Brief in Reply.
8. On 2 March 2000, the Trial Chamber heard the submissions of the parties on the Motion. At the end of the hearing, the Accused, through his Defence Counsel, stated that he was "pleading not guilty". See Transcript of 2 March 2000, at page 63.

SUBMISSIONS OF THE PARTIES

9. The Defence submits that the Trial Chamber violated Articles 19 and 20 of the Statute of the Tribunal (Statute), Rule 62, and Article 2 of the Directive on the Assignment of Counsel. The Defence asserts that the Accused could not enter a plea on 24 November 1999 because he "had not been assisted by the counsel of his choice and could therefore not understand the indictment." Motion at page 6. The Defence argues that the Trial Chamber did not satisfy itself that the Accused's rights were observed, and contends that such a denial of fundamental justice is prejudice in itself. The Motion prays that the Trial Chamber set aside and declare void the initial appearance of 24 November 1999.
10. The Prosecution does not oppose the Motion if the Accused changes his plea to one of guilty. Alternatively, the Prosecution submits that the Trial Chamber should deny the Motion and find it frivolous. The Prosecution contends that the Accused received a copy of the indictment in a language he understands before the initial appearance. Duty counsel represented the Accused. The Prosecution submits that the Trial Chamber did not find any violation of the rights of the Accused. The Trial Chamber, in satisfying itself, posed questions to the Accused, his duty counsel, and the Registry.

DELIBERATION

Right to Counsel

11. The Trial Chamber finds erroneous the Accused's contention that he can enter a plea only when represented by his permanent defence counsel. In the case at bench, the Registrar summoned Duty Counsel to represent the Accused from the very beginning. Before the initial appearance, Duty Counsel met with the Accused, conferred with him, and advised him. Transcript of 24 November 1999, at pages 26, 30. Representation by duty counsel satisfies an accused's right to counsel during an interim period (between transfer and assignment of counsel), and is provided for by Rule 44 *bis*. Nothing in the Statute or Rules provides that an accused should be represented by permanent defence counsel from the outset. To the contrary, the Tribunal added Rule 44 *bis* (D) to the Rules to avoid any delay of the initial appearance pending such appointment or choosing of defence counsel. Rule 44 *bis* (D) reads:

(D) If an accused, or suspect transferred under Rule 40 *bis*, is unrepresented at any time after being transferred to the Tribunal, the Registrar shall as soon as practicable summon duty counsel to represent the accused or suspect until counsel is engaged by the accused or suspect, or assigned under Rule 45.

The appointment of defence counsel by the Registrar or the choosing of defence counsel by the accused if he is not indigent, takes some time. The Trial Chamber finds that the legal representation afforded the Accused by his Duty Counsel satisfied his right to counsel pursuant to Rule 62(i), and concludes that the claim that an accused has a right to be represented by his permanent defence counsel in order to enter a plea during his initial appearance is baseless.

Understand the Indictment

12. The Defence alleges that the Accused did not understand, or "quite" understand, the indictment at the initial appearance because it contained "matters related to law" (transcript of 24 November 1999, at page 24) and "legal matters". *Id.*

13. The Accused received an indictment in Kinyarwanda, the language he understood, before the initial appearance. At the initial appearance a representative of the Registrar read out the indictment and the Accused was able to listen to a simultaneous interpretation of the reading in Kinyarwanda. Duty Counsel had several meetings with the Accused before the initial appearance and represented him at the initial appearance. Therefore, the Accused had all the necessary facilities to clarify with the Duty Counsel all "legal matters" that were not clear to him. The Accused failed to indicate clearly what he did not understand and he did not ask for any explanation of the indictment during the initial appearance; moreover, his statements were in general terms, unspecified, and vague. The Trial Chamber takes judicial notice of the allegations contained in the indictment that the Accused is an adult of reasonable education and served as the *Conseiller* of Gishyita Sector for several years. The Trial Chamber finds that it was reasonable to assume that the Accused understood the indictment, taking into consideration all the circumstances, and the Trial Chamber is of the view that the Accused was attempting to delay the proceedings, which is unacceptable to the Trial Chamber.

14. In such circumstances, the Trial Chamber had to apply Rule 62(iii) that provides, in particular, for cases when an accused refuses to cooperate and fails to enter a plea.

Material Prejudice


15. The Motion is based on the erroneous premise that the Accused cannot enter a plea when he is not represented by his permanent defence counsel. Moreover, the question is whether the Defence proved non-compliance with the Statute and Rules, and whether the Accused suffered any material prejudice. As found above, there was no violation of the Statute or Rules, and, therefore, the question of material prejudice does not arise. There, however, is a question about the purpose of the Motion. Taking into account that the Trial Chamber, at the initial appearance, only entered a plea of not guilty for the Accused, there is only one matter to be considered. From this point of view, the Trial Chamber notes the Prosecution's position of not opposing the Motion if the Accused wishes to change his plea. During the hearing of the Motion, however, Defence Counsel, on behalf of the Accused, confirmed that the Accused had no intention of changing his plea, and that the Accused was pleading not guilty. Thus, in this case, the Trial Chamber can conclude only that the Motion has no legitimate purpose.


Dilatory Tactics


16. Rule 62 requires that the accused, for purposes of an initial appearance after his transfer, be brought before a Trial Chamber "without delay." The Trial Chamber finds that the Accused, at his initial appearance, sought to delay the proceedings. The Trial Chamber also finds that the Motion is frivolous and intended to delay the proceedings. The Trial Chamber brings to the attention of the Defence Counsel that it will not tolerate any dilatory tactics or frivolous motions.

17. For all of the above reasons, the Trial Chamber **DENIES** the Defence Motion for the Annulment of the Initial Appearance.

Arusha, 20 March 2000.


Lloyd George Williams
Judge, Presiding


Yakov Ostrovsky
Judge

(Seal of the Tribunal)


Pavel Dolenc
Judge