

ICTR-96-12-I

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER III

ORIG: Eng.

Before: Judge Yakov Ostrovsky, designated by Trial Chamber III from among its members pursuant to Rule 73(A) of the Rules of Procedure and Evidence

Registrar: Dr. Agwu Ukiwe Okali

Decision of : 3 May 2000

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THE PROSECUTOR
versus
ANATOLE NSENGIYUMVA

Case No. ICTR-96-12-I

DECISION ON THE DEFENCE MOTION SEEKING THE STRIKING OUT OF
PARAGRAPH 6.17 OF THE CONCISE STATEMENT OF FACTS FOR NON-
COMPLIANCE OF ORDERS REQUIRING AMENDMENT

Counsel for the Accused:

Mr. Kennedy Ogetto
Mr. Gershom Otachi Bw'omanwa

Counsel for the Prosecutor:

Mr. Frederick Ossogo
Mr. David Spencer

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI	
NAME / NOM: ROSETTE MUZIGO-MORRISON	
SIGNATURE: [Signature]	DATE: 3 May 2000

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”);

SITTING in the person of Judge Yakov Ostrovsky, designated by Trial Chamber III from among its members pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal (the “Rules”);

NOTING the Indictment dated 11 July 1996 against Anatole Nsengiyumva (the “Accused”);

CONSIDERING that the Indictment was confirmed on 12 July 1996;

NOTING that on 18 January 1998 the Defence filed a motion seeking the striking out of the Indictment on the ground that it is defective;

NOTING that on 24 May 1999 the Tribunal ordered the Prosecutor to amend the Indictment;

CONSIDERING that on 31 July 1998 the Prosecutor moved to amend the Indictment and that the Tribunal granted leave to do so, orally on 11 August 1999 and by a written decision on 2 September 1999, and that the Prosecutor filed the Amended Indictment against the Accused on 12 August 1999;

BEING NOW SEIZED of Defence Motion Seeking the Striking Out of Paragraph 6.17 of the Concise Statement of Facts for Non-Compliance of Orders Requiring Amendment, dated 2 December 1999 and filed on 3 December 1999 (the “Motion”);

TAKING NOTE of the Prosecutor’s Response to the Motion, dated 20 March 2000 and filed on 24 March 2000; and

CONSIDERING the matter without a hearing solely on the briefs of the parties, pursuant to Rule 73(A) of the Rules.

PLEADINGS BY THE PARTIES**Defence Submissions**

1. The Defence submitted that the Prosecutor did not comply with the 24 May 1999 order of the Tribunal to amend the Indictment, including by providing more information in the concise statement of facts in paragraph 4.7 of the Indictment. The Defence argues that paragraph 6.17 of the Amended Indictment is virtually a replica of paragraphs 4.6 and 4.7 of the Indictment.
2. The Defence consequently requests the Trial Chamber to strike out paragraph 6.17 of the Amended Indictment together with portions of the counts that relate to it.

Prosecutor's Response

1. The Prosecutor submits that paragraph 6.17 of the Amended Indictment is not identical to paragraphs 4.6 and 4.7 of the Indictment and that, in any event, the issue of compliance with the 24 May 1999 order has been already disposed of in the 2 September 1999 decision to grant leave to amend the Indictment.
2. The Prosecutor consequently requests the Trial Chamber to dismiss the Motion.

FINDINGS

1. The Tribunal, in its 24 May 1999 decision, ordered the Prosecutor, *inter alia*, to identify the names and categorization of subordinates who are alleged to have committed acts specified in paragraph 4.7 of the Indictment.
2. Subsequently, the Tribunal, in its decision of 2 September 1999, recognized "that the requested amendments to the existing indictment incorporate, to some extent, the amendments ordered by Trial Chamber I on 24 May 1999." The reviewing Trial Chamber did not react in an adverse manner to the changes that the Prosecutor made to the Indictment. Its position can be best understood to indicate that the matter did not warrant any further action and that the amendments had complied with the spirit and intent of the 24 May 1999 order.
3. In any event, the fact that the decision of 24 May 1999 was implemented only to some extent cannot, in this particular case, be considered as a valid reason for striking out paragraph 6.17 of the Amended Indictment.
4. The confirmation of the Indictment means that the confirming Judge was satisfied that a *prima facie* case had been established by the Prosecutor. At this stage, there is no exhaustive exposition of the facts alleged in paragraph 6.17 of the Amended Indictment. However, there is sufficient information in the said paragraph for the Accused to understand the charges against him and for the Defence to prepare for trial.
5. It is incumbent upon the Prosecutor during the trial to prove beyond a reasonable doubt that the Accused is responsible for the acts particularly alleged in paragraph 6.17. It is also the right of the Defence to raise all questions during the trial in order to ascertain the veracity of the alleged facts specified in the said paragraph.
6. In the end, it will be for the Trial Chamber to determine whether the evidence produced by the Prosecutor at trial is sufficient to establish the charges proffered against the Accused in paragraph 6.17 of the Amended Indictment.

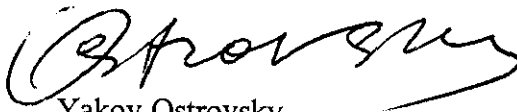
Case No. ICTR-96-12-1

FOR THESE REASONS,

THE TRIBUNAL

DENIES the Defence Motion Seeking the Striking Out of Paragraph 6.17 of the Concise Statement of Facts for Non-Compliance of Orders Requiring Amendment.

Arusha, 3 May 2000.


Yakov Ostrovsky
Judge

[Seal of the Tribunal]

