

ICTR 97-34-1

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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Lloyd George Williams, Presiding
Judge William H. Sekule
Judge Pavel Dolenc

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 4 May 2000

THE PROSECUTOR

v.

Gratien KABILIGI and
Aloys NTABAKUZE
Case No. ICTR-97-34-I

**DECISION ON NTABAKUZE'S MOTION FOR A DECLARATORY
RULING IN ORDER TO DETERMINE THE LAW APPLICABLE TO
THE PROSECUTOR'S MOTION FOR JOINDER FILED ON 28
OCTOBER 1999, PRIOR TO HEARING THE SAID MOTION**

The Office of the Prosecutor:

Carla Del Ponte
David Spencer
Frédéric Ossogo
Holo Makwaia

Counsel for Aloys Ntabakuze:

Clemente Monterosso

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1. **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal")

SITTING as Trial Chamber III, composed of Judge Lloyd G. Williams, presiding, Judge William H. Sekule (as assigned by the President) and Judge Pavel Dolenc (the "Trial Chamber");

BEING NOW SEIZED OF Ntabakuze's "Motion for a Declaratory Ruling in Order to Determine the Law Applicable to the Prosecutor's Motion for Joinder filed on 28 October 1999, Prior to Hearing the Said Motion" filed 18 October 1999 (the "Motion");

CONSIDERING the Prosecutor's "Response to the Accused's Motion for a Declaratory Ruling in Order to Determine the Law Applicable to the Prosecutor's Motion for Joinder filed on 28 October 1999, Prior to Hearing the Said Motion" filed 30 November 1999;

HAVING HEARD the arguments of Defence Counsel for Ntabakuze and the response of the Prosecutor on 2 December 1999;

NOW DECIDES THE MOTION.

THE SUBMISSIONS OF THE DEFENCE

2. Counsel for Ntabakuze submits that in order to be properly prepared to challenge the Prosecutor's motion for joinder, Ntabakuze has the right to know in advance which statutory provisions the Trial Chamber will use as a basis for ruling on the Prosecutor's motion.

THE PROSECUTOR'S REPLY

3. The Prosecution submits that an accused is not entitled to have the applicable rules determined before they are applied. The rules under which the Tribunal operates are set out in the Statute of the International Criminal Tribunal for

Rwanda ("the Statute"), the Rules of Procedure and Evidence ("the Rules") and the jurisprudence developed in previous cases. Neither the Statute nor the Rules provides for a ruling on what rules will be applied to a particular motion before the motion is presented to the Trial Chamber.

4. The Prosecution relies on the decision in *Prosecutor v. Bagosora*, Case ICTR-96-7-T (Decision on the Defence Motion for Pre-Determination of Rules of Evidence) (8 July 1998), where Bagosora's Counsel requested that Trial Chamber II make an advance ruling on the Rules. Trial Chamber II dismissed the motion. It is the Prosecutor's submission that the decision in that case is adverse to Ntabakuze's Motion.

DELIBERATION

5. The Trial Chamber does not propose to give a Declaratory ruling. The Trial Chamber will not give a prior ruling on a matter before it falls for consideration. In addition, there is no provision for such a ruling in the Rules. The Motion is misconceived.
6. There was no necessity for this Motion to be filed separately. It ought to have been included in the defence response to the joinder motion as the issue raised is essentially related to the joinder motion.
7. The Trial Chamber considers the Motion to be frivolous, an abuse of process and without merit. The Trial Chamber further finds that this Motion is not necessary or reasonable and in the exercise of its inherent powers directs the Registrar not to award any costs including fees with respect to this Motion. In the alternative, the Trial Chamber applies Rule 73(E) with respect to the denial of costs. Rule 6(C) with regard to prejudice of the rights of the accused does not arise in these circumstances. There is no prejudice to Ntabakuze's rights. Ntabakuze is being represented by assigned Counsel. This is a sanction against Defence Counsel.

8. **FOR THESE REASONS**, the Tribunal:

(a) **DENIES** the “Motion for a Declaratory Ruling in Order to Determine the Law Applicable to the Prosecutor’s Motion for Joinder on 28 October 1999, Prior to Hearing the Said Motion”; and

(b) **DIRECTS** the Registrar not to award any costs including fees to Defence Counsel with respect to this Motion.

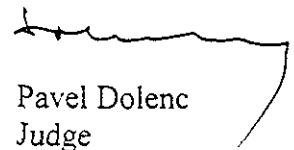
Arusha, 4 May 2000.



Lloyd George Williams
Presiding Judge



William H. Sekule
Judge



Pavel Dolenc
Judge

Seal of the Tribunal

