

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 SEEKING TO HAVE
RULE 48BIS DECLARED *ULTRA VIRES* UNLAWFUL, CONTRARY
TO THE RULES OF PROCEDURE AND EVIDENCE, AND
INAPPLICABLE TO THE ACCUSED**

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 Seeking to Have Rule 48*bis* Declared ‘*Ultra Vires*’ Unlawful, Contrary to the Rules of Procedure and Evidence Adopted on 5 July 1995 and Subsequently Amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997, 8 June 1998 and 1 July 1999, and Inapplicable to the Accused” filed 28 July 1999 (the “Motion”);

CONSIDERING the Prosecutor’s “Response to the Accused’s Motion Seeking to Have Rule 48*bis* Declared ‘*Ultra Vires*’ Unlawful, Contrary to the Rules of Procedure and Evidence Adopted on 5 July 1995 and Subsequently Amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997, 8 June 1998 and 1 July 1999, and Inapplicable to the Accused” filed 30 November 1999;

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

NOW DECIDES THE MOTION.

THE SUBMISSIONS OF THE DEFENCE

2. Defence Counsel contends that there is no provision in the Rules of Procedure and Evidence (“the Rules”) which allows for joinder at this stage of the proceedings. He asserts that the Prosecutor cannot rely on Rule 48 *bis* to support the Motion because the Motion was filed before Rule 48 *bis* was added to the Rules, and he

concludes that Rule 48 does not allow for the joinder of accused persons who have been separately indicted.

3. The Defence submits that Rule 48 *bis* is *ultra vires*, unlawful, and inapplicable in the instant case because applying it would prejudice Ntabakuze's rights contrary to Rule 6(C) which prevents the retroactive application of amendments that prejudice the rights of an accused.

THE PROSECUTOR'S REPLY

4. The Prosecutor contends that it brings the Motion under Rule 48 and there is no need to apply Rule 48 *bis* in order to grant joinder.

DELIBERATIONS

5. The Trial Chamber finds that the Motion does not raise an issue with respect to the validity of Rule 48 *bis* on the basis of it being *ultra vires*, because it is clear that the Plenary was competent to enact this provision, nor does this provision offend any provision of the Statute, namely Article 14. What the Defence seems to be raising is the issue of the retroactive application of this provision which is not an *ultra vires* issue. The Motion is misconceived.
6. The Prosecutor has filed the Motion under Rule 48 and the Trial Chamber proposes to deal with it on that basis.
7. 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 is essentially related to the joinder motion.
8. The Trial Chamber considers the Motion frivolous, an abuse of process and without merit. The Trial Chamber further finds that the Motion is not necessary

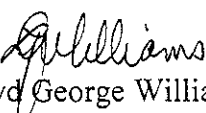
or reasonable and in the exercise of its inherent powers directs the Registrar not to award any costs including fees with respect to this Motion. In the alternative, the Trial Chamber applies Rule 73(E) with respect to the denial of costs. Rule 6(C) with regard to prejudice of the rights of the accused 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.


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

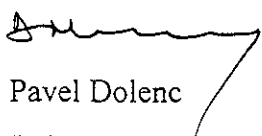
(a) **DENIES** the "Motion Seeking to have Rule 48 *bis* Declared "*Ultra Vires*", Unlawful, Contrary to the Rules of Procedure and Evidence Adopted on 5 July 1995 and Subsequently Amended on 12 January 1996, 15 May 1996, 4 July 1996, 5 June 1997, 8 June 1998 and 1 July 1999, and Inapplicable to the Accused"; 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

