

UNITED NATIONS  NATIONS UNIES
International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Decision of: 17 May 2000

THE PROSECUTOR
v.
GRATIEN KABILIGI and
ALOYS NTABAKUZE

Case No. ICTR-96-34-I

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**DECISION ON THE PROSECUTION MOTION FOR A TEMPORARY
STAY OF EXECUTION OF THE DECISION OF 5 OCTOBER 1998
RELATING TO DEFECTS IN THE FORM OF THE INDICTMENT**

The Office of the Prosecutor:

Carla Del Ponte
David Spencer
Frédéric Ossogo
Holo Makwaia

Defence Counsel for Gratien Kabiligi:

Jean Yaovi Degli

Defence Counsel for Aloys Ntabakuze:

Clemente Monterosso

1. **The International Criminal Tribunal for Rwanda** (Tribunal), sitting today as Judge Pavel Dolenc, designated by the Trial Chamber III from among its members pursuant to Rule 73(A) of the Tribunal's Rules of Procedure and Evidence (Rules);
2. **Being Seized** of the "Prosecution Motion for a Temporary Stay of Execution of the Decision of 5 October 1998 Relating to Defects in the Form of the Indictment" (Motion) filed on 21 May 1999;
3. **Considering** the Defence Counsel for Gratién Kabiligi's "Defence Brief in Reply to the Prosecutor's Motion Seeking a Stay in the Execution of the Decision of 5 October 1998 on Defects in the Form of the Indictment", filed on 15 July 1999;
4. **Now considers** the matter solely on the briefs of the parties pursuant to Rule 73(A).

SUBMISSIONS OF THE PROSECUTOR

5. The Prosecutor files her Motion under Rule 54. She seeks a stay of the Decision of 5 October 1998 (Decision) relating to defects in the form of the original indictment. She submits that new paragraphs in the then proposed amended indictment (which the Trial Chamber had not granted at the time of the filing of her Motion) satisfy the Decision.

SUBMISSIONS OF THE DEFENCE

6. The Defence submit that the Decision is *res judicata* and not subject to appeal. The Prosecutor has not complied with the Decision and is dangerously prejudging this issue. The Defence prays that the Tribunal dismiss the Motion.

REASONING

7. On 8 October 1999, the Trial Chamber dismissed a similar motion by the Prosecutor in regard to the co-accused, Ntabakuze, but in an apparent oversight, failed to handle this Motion. *See Prosecutor v. Kabiligi & Ntabakuze*, ICTR-97-34-I, at paras. 62-65, 69 (Decision on the Prosecutor's Motion to Amend the Indictment) (8 October 1999). The Trial Chamber held that the amendment of the indictment superceded the compliance ordered by the former Trial Chamber II in its Decision of 5 October 1998. *See id.* at para. 65.
8. Thus, for the same reasons the Trial Chamber stated in its Decision of 8 October 1999, the Motion is moot.
9. For the above reasons, the Tribunal **DISMISSES** the "Prosecution Motion for a Temporary Stay of Execution of the Decision of 5 October 1998 Relating to Defects in the Form of the Indictment".

Arusha, 17 May 2000.

Pavel Dolenc
Judge

