



**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: 18 May 2000

**THE PROSECUTOR
versus
ALOYS NTABAKUZE**

Case No. ICTR-97-34-I

2000 MAY 18 P 5:21
ICTR
COURT REGISTRY
RECEIVED

**DECISION ON PRELIMINARY MOTION SEEKING TO OBTAIN FROM THE
NEW INDICTMENT CLARIFICATION CRUCIAL IN THE EXERCISE OF THE
RIGHT OF THE ACCUSED TO RAISE PRELIMINARY MOTIONS
(UNDER RULE 50(C) OF THE RULES OF PROCEDURE AND EVIDENCE)**

Counsel for the Accused:

Ms. Simonette Rakotondramanitra
Mr. Clemente Monterosso

Counsel for the Prosecutor:

Mr. Chile-Eboe Osuji
Mr. Frederic Ossogo
Ms. Holo Makwaia

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 (the “Rules”);

BEING SEIZED of a Preliminary Motion Seeking to Obtain From the New Indictment Clarification Crucial in the Exercise of the Right of the Accused to Raise Preliminary Motions (under Rule 50(C) of the Rules of Procedure and Evidence), dated and filed on 18 October 1999 (the “Motion”);

NOTING the Prosecutor’s response to the Motion, dated and filed on 28 March 2000, and the corrigendum thereto, dated and filed on 13 April 2000;

NOTING the additional brief of the Defence, dated 16 May 2000.

CONSIDERING the matter solely on the briefs of the parties pursuant to Rule 73(A) of the Rules.

PLEADINGS BY THE PARTIES

Defence Submissions

1. The Defence submits that on 13 August 1999 the Prosecutor filed an amended indictment against the Accused Aloys Ntabakuze and that the Defence was unable to determine from the amended indictment the new charges against the Accused.
2. Consequently, the Defence requests the Chamber to direct the Prosecutor to underline or to produce in bold characters all the amended portions of the amended indictment so as to enable it to file preliminary motions under Rule 50(C) of the Rules.
3. The Defence further requests the Chamber to suspend the period of sixty days allowed under Rule 50(C) of the Rules for the filing of preliminary motions in respect of the new charges until it receives the clarification sought in its Motion.
4. Finally, the Defence argues that the Accused was caused to plead not only on the new counts in the amended indictment, but rather, in violation of Rule 50 (B) of the Rules and despite objections of the Defence, on all ten counts brought against him therein.

Prosecutor’s Response

1. The Prosecutor responds that the Statute of the Tribunal (the “Statute”) and the Rules do not require her to underline any portion of the indictment.
2. The Prosecutor further argues that the Defence is well aware of what constitutes the new

charges against the Accused in the amended indictment. In support of this, the Prosecutor points out that the Defence has enumerated the new charges in various motions that it has filed.

3. The Prosecutor consequently posits that there are no grounds to the Defence arguments that the new charges must be underlined before the Accused can exercise his rights under Rules 50(C) and 72(B) of the Rules.
4. Finally, the Prosecutor argues that the Chamber cannot suspend the sixty day time limit because the Defence failed to comply with the requirements of Rule 72(F) of the Rules that a showing of good cause be made before the Chamber can grant relief for non-compliance with the Rule.
5. The Prosecutor consequently requests the Chamber to dismiss the Motion.

FINDINGS

1. It is not open to doubt that the Accused was aware of the new charges against him from the moment of his further appearance and plea on 13 August 1999. The fact that the Motion itself enumerates the new counts added in the amended indictment (*see* para. 12 of the Motion) is persuasive evidence that the Accused and his Counsel are able to distinguish the new charges from those made in the original indictment.
2. Moreover, each new count in the amended indictment contains specific references to the concise statement of facts supporting the charges. The Accused and his Counsel thus have had open to them the opportunity to study the matter in detail and to file preliminary motions in respect of the new charges.
3. Therefore, from a practical point of view, the request to highlight the new portions of the amended indictment is not founded. Furthermore, nothing in the Statute or in the Rules obliges the Prosecutor to underline or otherwise highlight any portion of an indictment, as the Prosecutor correctly notes.
4. The Prosecutor is also correct to call attention to the issue of timeliness of the filing of the present Motion. At the time of the filing of the Motion, Rule 50(C) allowed the accused sixty (60) days from his further appearance for the filing of preliminary motions pursuant to Rule 72 in respect of new charges against him.
5. Here, the Accused filed the Motion outside of the sixty-day time limit.
6. Rule 72(F) of the Rules prescribes that failure to comply with the time limits for the filing of preliminary motions constitutes a waiver of the right to bring such motions. Under this Rule, the Chamber may grant relief from the waiver upon the showing of a good cause. In this case, however, the Accused failed to show good cause for his failure to comply

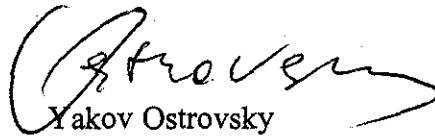
with the prescribed time limits.

7. Finally, it should be noted that entering a plea on all (new and pre-existing) counts of an amended indictment is a procedural matter which cannot be considered to be a violation of Rule 50(B) of the Rules. The fact that the Accused pleaded to all ten counts brought against him in the amended indictment did not prejudice his rights in any way.
8. In light of the facts presented, the arguments underlying the Motion are farfetched and the filing of the Motion constitutes an abuse of the process.

FOR THESE REASONS, THE TRIBUNAL

1. **DENIES** the Motion.
2. **DIRECTS** the Registrar, pursuant to Rule 73(E) of the Rules, not to pay fees associated with the filing of this Motion.

Arusha, 18 May 2000.


Yakov Ostrovsky
Judge

[Seal of the Tribunal]

