



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

UNITED NATIONS
NATIONS UNIES

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TRIAL CHAMBER III

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registry: Dr. Agwu Ukiwe Okali

Decision of: 19 May 2000

**The Prosecutor
Versus
Aloys Ntabakuze**

Case No. ICTR-97-34-T

**DECISION ON THE DEFENCE MOTION TO IMPLEMENT TRIAL CHAMBER II
DECISION RENDERED ON 25 SEPTEMBER 1998 ORDERING THE RETURN OF
SEIZED ITEMS AND ON THE PROSECUTOR'S MOTION FOR A TEMPORARY
STAY FOR THE EXECUTION OF THE SAME DECISION**

The Office of the Prosecutor:

Mr. Chile Eboe-Osuji
Mr. Frédéric Ossogo

Defence Counsel:

Mr. Clemente Monterosso

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal)

SITTING as Trial Chamber III (the Trial Chamber) composed of Judges Lloyd George Williams, presiding, Yakov Ostrovsky and Pavel Dolenc;

NOTING that on 25 September 1998, the former Trial Chamber II rendered a decision following a motion filed by Aloys Ntabakuze's Defence Counsel (Defence Counsel) seeking, *inter alia*, the return of Ntabakuze's personal effects seized by the Prosecutor at the time of his arrest.

CONSIDERING that part of the said decision reads as follows:

“2. Orders the OTP to return to the Defence any items that would not be required for the continued investigation of the case, positively within three weeks from the date of this order.

3. Instructs the OTP to inform the Defence of all items which cannot be returned at this time, positively within three weeks from the date of this order.”

BEING NOW SEIZED of Ntabakuze's motion filed on 22 December 1998, for an order to immediately implement the decision rendered by the former Trial Chamber II on 25 September 1998;

CONSIDERING the Prosecutor's brief in response filed on 25 May 1999 together with its motion for a temporary stay of execution of the Trial Chamber II decision of 25 September 1998;

HAVING HEARD the parties on 17 May 2000.

NOW DECIDES THE MOTIONS

SUBMISSIONS OF THE PARTIES

Submissions of the Defence:

1. The Defence asserts that it has not been advised of the return of any personal effects of Aloys Ntabakuze (the Accused), whereas the three-week deadline ordered by the Tribunal had expired a long time ago.
2. The Defence contends that the Accused's interests have been seriously jeopardized and requests the Tribunal to order the immediate compliance with the decision rendered by Trial Chamber II on 25 September 1998.
3. In its oral submissions, the Defence admits having received from the Registry copies of the seized items but points out that no inventory was drawn up at the time of the seizure, so that it cannot know whether the copies received cover all the items involved. It further asks for the

complete list of the seized items as well as the original of personal items like photographs that have nothing to do with the proceedings.

The Prosecutor's Response to the Defence Motion

1. The Prosecution admits having delayed in the execution of the Trial Chamber II decision. It explains this delay by the difficulties it faced in examining all the materials seized from the Accused, at a time when its resources were very limited.
2. The Prosecution asserts that it finally complied with the decision of 25 September 1998. It returned the following items seized at the residence of the Accused: Seven (7) copies of videotapes, two (2) volumes of copies of documents. All the items were deposited with the Registry on 4 May 1999.
3. The Prosecution adds that the original of one videotape (No KV00-143) was defective and could not be copied. This will be done once it is technically possible.
4. The Prosecution draws attention to the fact that the investigation of Ntabakuze's involvement in the perpetration of the alleged crimes is still ongoing.
5. The Prosecution asserts that the Defence motion lacks of merit. It therefore is requesting that it be dismissed.

The Prosecution's Motion:

6. The Prosecution requests the Tribunal to authorize it to preserve the originals of the documents seized from the Accused on 18 July 1997. The Prosecution refers to Rule 41 of the Rules of Procedure and Evidence (the Rules), which entitles it to be the custodian of seized items until the decision on the guilt of an accused is made.
7. In support of this request, the Prosecution asserts that the use of the seized documents could enable it to narrow down the ongoing investigations. It adds that relinquishing the original documents may become a major impediment to the establishment of the truth and that the Defence has copies of the seized documents and can use them as necessary.

DELIBERATION

1. The Trial Chamber finds irresponsible and inadmissible the attitude of the Prosecution of non-compliance with the Trial Chamber II decision within the required time. If there was any difficulty with complying with the decision, the Prosecutor should have requested the Chamber to modify the order before the end of the three week time limit.

2. Having said this, it must be emphasized that the decision with which compliance is sought orders the return of the items, provided their preservation is not required for the continued investigation of the case.
3. The only unconditional affirmative obligation for the Prosecution pursuant to that decision was to inform the Defence of items, which could not be returned immediately within three weeks from the date of the decision.
4. Most certainly, the delay of the OTP in depositing copies of items seized with the Registry, only on 4 May 1999, that is to say more than seven (7) months after the Trial Chamber II decision and four (4) months after having received the Defence motion, is deplorable.
5. However, the above-mentioned decision left it within the discretion of the Prosecution as to which items were to be returned to the Defence, obliging the Prosecution only to inform the Defence of items which could not be returned at that time.
6. The Trial Chamber takes note that the Defence Counsel admitted that it received copies of seized items from the Registry.
7. Regarding the originals of personal items the Defence is asking for, the Trial Chamber concludes that in accordance with the previous order of Trial Chamber II, only the Prosecution can determine whether it will need them for its investigations. The Prosecutor should not unnecessarily keep items that will not be required by her. The Chamber can only order the Prosecution to hand over to the Defence the originals of documents it considers unnecessary for its investigations. The Prosecution is also ordered to give a complete list of the seized items to the Defence.
8. There is no need for the Chamber to authorize the Prosecutor to preserve the originals of the documents and other items seized from the Accused on 18 July 1997 since Rule 41 of the Rules already gives that authority to the Prosecutor.


FOR THESE REASONS, THE TRIBUNAL

1. **RECOGNIZES** as founded the Defense motion contending that the Prosecution did not comply with the Trial Chamber II decision within the required time and admonishes it for that
2. **VARIES** the order of 25th September 1998, as follows:
 - A. **ORDERS** the Prosecutor to return the originals of all documents or other items which are not necessary for the continued investigation of the case or the trial.
 - B. **ORDERS** that in circumstances where the original documents are needed in accordance with the above paragraph, then copies of the said documents should be returned to the Defence.
 - C. **ORDERS** the Prosecution to provide the Defence with a list of the seized items.
 - D. **ORDERS** the Prosecution to comply with this decision within 21 days from the date of its notification.
3. **DISMISSES** the Prosecutor's motion

Arusha, 19 May 2000.


 Lloyd George Williams
 Judge, Presiding


 Yakov Ostrovsky
 Judge


 Pavel Dolenc
 Judge

Seal of the Tribunal

