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UNITED NATIONS  NATIONS UNIES

International Criminal Tribunal for Rwanda

TRIAL CHAMBER II

OR: ENG

Before: Judge Laïty Kama, Presiding
Judge William H. Sekule
Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Decision of: 20 June 2000

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THE PROSECUTOR
v.
PAULINE NYIRAMASUHUKO and
ARSENE SHALOM NTAHOBALI

Case No. ICTR-97-21-I

**DECISION ON THE JOINT MOTION BY THE CO-ACCUSED,
PAULINE NYIRAMASUHUKO AND ARSÈNE SHALOM
NTAHOLBALI SEEKING PROTECTION OF THEIR
RIGHTS IN THE CONTEXT OF JOINT TRIALS**

The Office of the Prosecutor:

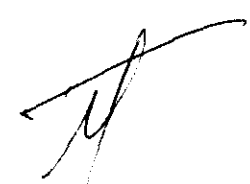
Japhet Mono
Ibukunolu Babjide
Andra Mobberley

Defence Counsel for Pauline Nyiramasuhuko:

Nicole Bergevin
Guy Poupart

Defence Counsel for Arsène Shalom Ntahobali:

René St. Léger



1. The International Criminal Tribunal for Rwanda (Tribunal), sitting as Trial Chamber II, composed of Judges Laity Kama, presiding, William H. Sekule, and Pavel Dolenc (as assigned by the President), is seized of the "Joint Motion by the Co-Accused, Pauline Nyiramasuhuko and Arsène Shalom Ntahobali Seeking Protection of their Rights in the Context of Joint Trials" (Motion), filed 28 February 2000.
2. On 6 June 2000, the Trial Chamber heard the parties at a hearing on the Motion.

SUBMISSIONS

3. The Motion prays that the Trial Chamber instruct the Registrar to serve on the Accused any motion filed in relation to any other co-accused as soon as registered. The Motion further prays that the Trial Chamber allow the Accused and their defence counsels to intervene and travel for the hearings of such motions.
4. The Prosecutor filed a Response on 5 May 2000. The Prosecutor submits that there is no automatic right of audience for a co-accused, and that the Trial Chamber has discretion on appearances. The Prosecutor also distinguishes between those accused named in a single indictment and those joined. The Prosecutor argues that each accused must file a motion to appear and demonstrate potential prejudice in order to appear at the hearing of a motion of a co-accused.

DELIBERATION

5. The Trial Chamber has deliberated.
6. The Trial Chamber, for purposes of clarity of terminology, notes that Nyiramasuhuko and Ntahobali are named in the same, single indictment, and, thus, they constitute "co-accused." The Trial Chamber further notes that it has joined their case with that of four other accused, namely Nsabimana, Nteziryayo, Kanyabashi, and Ndayambaje. Thus, the six accused constitute "joined accused."
7. The Trial Chamber, however, makes no distinction between "co-accused" and "joined accused" in respect to this Motion.
8. The Trial Chamber finds merit in the defence's first prayer for the transmission of all motions related to co-accused and joined accused. In order to prepare their case, the defence must be informed and in receipt of all motions related to the co-accused and joined accused. The Trial Chamber, however, holds that all other joint accused should have in this respect the same right as the applicants.
9. The Trial Chamber finds that the Statute and Rules provide no automatic right to appear and intervene in the hearing of a motion of a co-accused or joined accused. Moreover, no party has an automatic right of appearance. Rule 73, for example, provides for the Trial Chamber to decide a motion on the briefs alone and without a hearing for even the moving party.
10. In this regard, the Trial Chamber has discretion in authorising appearances and interventions upon a showing of good cause or in the interest of justice.

11. To date, it has been the practice of the Tribunal on many occasions, at its discretion, to schedule hearings for a single accused person though he has a co-accused. For practical considerations and because many motions do not involve a legal interest or right of a co-accused, it is in the interests of justice and judicial economy to have only the accused, who is the moving party, appear.

12. The Trial Chamber, however, notes that this practice still allows a co-accused or joined accused to seek to file written submissions, appear, or intervene.

13. The Trial Chamber finds no reason to deviate from this practice.


14. Thus, the Trial Chamber, in its discretion, *proprio motu*, and after considering the rights of all accused, will schedule or not schedule hearings of motions and order the appearance of the appropriate parties. When a co-accused or joined accused is in receipt of a motion and wants to appear or intervene, he may seek to do so, first by communicating with the Tribunal's Court Management Section.


15. The Trial Chamber notes that this issue only arises at the pretrial stage, and that at trial all parties will be present.

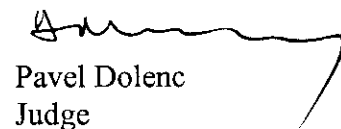
16. For the above reasons, the Trial Chamber:

- (a) **GRANTING** the first Defence request and *proprio motu* **ORDERS** the Registry to serve upon all joined accused the motions filed by all other joined accused and the motions filed by the Prosecutor in the cases of the joined accused;
- (b) **DENIES** the second Defence request to always be allowed to appear, intervene, and travel to Arusha for all motions of all other joined accused;
- (c) **DENIES** the Motion in all other respects.
- (d) **ORDERS** the Registry to serve a copy of this Decision upon all joined accused.

20 June 2000, Arusha.


 Latty Kama
 Judge, Presiding


 William H. Sekule
 Judge


 Pavel Dolenc
 Judge

Seal of the Tribunal