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ICTR-97-34-1  
28-6-2000  
(5594-5590) (5)

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International Criminal Tribunal for Rwanda

TRIAL CHAMBER III

OR: ENG

Before: Judge Lloyd G. Williams, Presiding  
Judge Yakov Ostrovsky  
Judge Pavel Dolenc

Registrar: Dr. Agwu U. Okali

Decision of: 28 June 2000

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THE PROSECUTOR  
v.  
GRATIEN KABILIGI and  
ALOYS NTABAKUZE

Case No. ICTR-97-34-I

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**DECISION ON KABILIGI'S MOTION FOR DISCLOSURE AND  
RESTITUTION OF DOCUMENTS PURSUANT TO DECISION  
RENDERED ON 5 OCTOBER 1998 AND THE PROSECUTOR'S  
MOTION FOR A TEMPORARY AND PARTIAL STAY OF  
EXECUTION OF THE SAME DECISION**

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The Office of the Prosecutor:

Chile Eboe-Osuji  
Frédéric Ossogo

Defence Counsel for Gratién Kabiligi:

Jean Yaovi Degli

Defence Counsel for Aloys Ntabakuze:

Clemente Monterosso

1. **THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (TRIBUNAL)**, sitting today as Trial Chamber III, composed of Judge Lloyd George Williams, presiding, Judge Yakov Ostrovsky and Judge Pavel Dolenc (the Trial Chamber);

**Being seized of** Defence Counsel for Gratién Kabiligi's "Motion for Disclosure and Restitution of Documents pursuant to Decision Rendered on 5 October 1998" (Defence Motion), filed 20 January 1999, pursuant the Rules 73 and 40(C) of Rules of Procedure and Evidence (Rules);

**Being seized of** the Prosecutor's "Motion for a Temporary and Partial Stay of Execution of the Decision of 5 October 1998" (Prosecutor's Motion), filed as part of the same document as her reply on 21 May 1999;

**Considering** the Prosecutor's "Brief in Reply to Defence Motion for the Disclosure and Restitution of Documents pursuant to the Decision of 5 October 1998" (Prosecutor's reply), filed 21 May 1999;

**Considering** the Defence "Brief in Reply to the Prosecutor's Motion Seeking a Temporary and Partial Stay in the Execution of the Decision of 25 September 1998", dated 15 July 1999;

**Considering** the decision of the former Trial Chamber II of 5 October 1998 on the Defence Counsel for Kabiligi's Motion for the Restitution of Items and Documents Seized (the Decision);

**Noting** the list of items seized from Kabiligi on 18 July 1997, which was attached to the Defence Motion for Restitution of Items and Documents Seized, dated 17 February 1998;

**Noting** the Prosecutor's letter, filed 4 May 1999, on a release of exhibits in accordance with the Decision of 5 October 1998;

**Having** heard the parties at a hearing on the matter on 17 May 2000;

**NOW DECIDES THE MATTER.**

#### **SUBMISSIONS OF THE DEFENCE**

2. The Defence in its motion asserts that the Prosecutor to date has not complied with the decision of Trial Chamber II of 5 October 1998, because she has not returned to the Defence all originals of documents which are not necessary for trial, nor copies of documents she needs for trial, despite the fact that the time period for execution of the Decision expired a long time ago.

3. In oral submissions, the Defence insisted that the Prosecutor should be compelled to comply entirely with the Decision. Transcript of the hearing on 17 May 2000, pages 26 and 45. However, the Defence also submitted that it would be satisfied when the Prosecutor supplies copies of the seized items, which she needs for further investigations.
4. The Defence requests that the Prosecutor return or disclose the originals of documents and copies pursuant to the Decision within three days or an appropriate coercive measure should be ordered to make the Decision effective.
5. In its written reply (which erroneously refers to the date of the Decision as 25 September 1998) to the Prosecutor's Motion the Defence submits that the Prosecutor's Motion was filed after the time limit of fifteen days. The Prosecutor failed to appeal against the Decision and so it became final. A final decision may be revised only if specific circumstances warrant it. The seized items belong to the Accused and may be used for his defence; some other items are completely irrelevant to the charges. The Prosecutor should be able to assess relevance of seized items since she has had them in her possession for two years.
6. The Defence prays that the Prosecutor's Motion should be dismissed.

#### **SUBMISSIONS OF THE PROSECUTOR**

7. In her Motion, the Prosecutor submits that under Rule 41, like in criminal law in many countries, the originals of seized items remain in the custody of the Prosecutor until the final judgement. Further, the documents in respect to a military campaign may constitute a serious threat to persons and property if returned to the Accused. Seized items helped to narrow but also to expand the scope of ongoing investigations. Relinquishing the originals, which might seem to have no particular bearing on the trial, may later become a major impediment to demonstration of the truth, of some aspects of the investigations within Rwanda, in the Great Lakes Region, and outside Africa.
8. In her oral submissions, the Prosecutor contends that in civil and common law systems a stay of execution of a decision is admissible when difficulties in its execution occur. She had to inspect and analyse about 200 kilograms of seized documents at the time when there was a lack of staff and equipment. The security situation in Rwanda also impeded the work of her office. Execution of a decision may be inadmissible if it is contrary to the public interest or affects the security interest of any State pursuant to Rule 66(C). The Prosecutor requests a partial review of the Decision (*Ibid.*, at pages 38, 39 and 47) in order to keep in her possession the originals until the end of the trial (*Ibid.*, at pages 38 and 42), because she needs the originals for further investigations against the Accused and other persons pursuant to Rules 41 and 54 and Article 15 of the Statute of the Tribunal.

9. In her reply to the Defence Motion, the Prosecutor asserts that she complied, although belatedly, with the Decision when she deposited on 4 May 1999 at the Registry two volumes of copies of documents, thirty-one copies of videotapes and two original videotapes, while two videotapes have not been copied because they are defective, they will be copied as soon as it is technically possible. The Prosecutor submits that she is still pursuing investigations into Kabiligi's responsibility for the crimes alleged in the indictment.
10. The Prosecutor requests that the Trial Chamber dismiss the Defence Motion.

### **DELIBERATION**


11. Based on the submissions of the parties, it appears that on 18 July 1997, when Gratién Kabiligi was arrested, a search of his residence in Nairobi was carried out and various documents, books and videotapes weighing about 80 kilograms (submission of the Defence) or 200 kilograms along with items seized from other suspects (submission of the Prosecutor), apparently belonging to the Accused and his family were seized.
12. The Trial Chamber notes that the former Trial Chamber II in its Decision made the following order:
  - “1. Directs the Prosecutor to return the originals of all documents which are not necessary for the trial, and supply attested copies of all those documents which the Prosecutor intends to use in the trial as the said copies may be useful for the Defence. The Prosecutor shall return and supply the said documents within fifteen days from the date of this order.”
13. The Trial Chamber notes that the Decision left it entirely to the Prosecutor to decide which temporarily seized items are necessary for the trial and, consequently, which items she will return as an original or as a copy.
14. The Prosecutor discharged her obligation to return the originals or to supply the Defence with copies of the seized items when she deposited them at the Registry. This is apparent from her written and oral reply, supported by her letter filed with the Registry on 4 May 1999 with attachments, and certified by the Registry on 25 June 1999. If there is any question as to the completeness of the supplied copies or originals of the seized items, the Defence should clarify it with the Registrar and the Prosecutor.
15. The Trial Chamber views with disfavour the fact that the Prosecutor did not comply with the Decision nor did she apply for an extension of the time within which to comply with the Decision in a timely manner. The Trial Chamber, therefore, admonishes her for that.

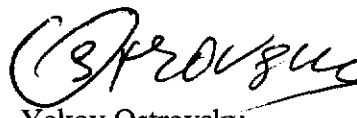
16. The Trial Chamber also finds that there is no need for a stay of execution or for review of the Decision as the Prosecutor requests in her submissions. The Defence concedes that the Prosecutor is entitled to keep in her possession the originals which are necessary for the trial of the Accused, which is in keeping with the original Decision. The Decision, therefore, already facilitates the judicial process and accounts for the interests of both parties.

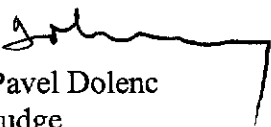
**FOR THE ABOVE REASONS, THE TRIBUNAL:**

- a. **DENIES** Kabiligi's Motion for Disclosure and Restitution of Documents pursuant to Decision rendered on 5 October 1998, and
- b. **DENIES** the Prosecutor's Motion for a Temporary and Partial Stay of Execution of the Decision of 5 October 1998.

Arusha, 28 June 2000

  
Lloyd G. Williams  
Presiding Judge

  
Yakov Ostrovsky  
Judge

  
Pavel Dolenc  
Judge

(Seal of the Tribunal)