



International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

UNITED NATIONS  
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**TRIAL CHAMBER I**

Original: English

Before: Judge Asoka de Zoysa Gunawardana, Presiding  
Judge Navanethem Pillay  
Judge Erik Møse

Registry: Ms Aminatta N'Gum

Date of Decision: 6 July 2000

**THE PROSECUTOR v. MIKAELI MUHIMANA and 7 others**

**(ICTR-95-1-I)**

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**DECISION ON THE PROSECUTOR'S MOTION FOR LEAVE TO SEVER AN  
INDICTMENT**

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Office of the Prosecutor:

Mr Charles Adeogun-Phillips  
Mr Wallace Kapaya

Counsel for the Accused:

Mr Nyabirungu mwene SONGA

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (hereinafter the “Tribunal”)**

**SITTING** as Trial Chamber I, composed of Judge Asoka de Zoysa Gunawardana, Presiding, Judge Navanethem Pillay and Judge Erik Møse (hereinafter “the Chamber”);

**CONSIDERING** the indictment, ICTR-95-1-I, confirmed on 28 November 1995, by Honourable Judge Pillay, as amended on 6 May 1996, in the case of Prosecutor v. Clement Kayishema, Ignace Bagilishema, Charles Sikubwabo, Aloys Ndimbati, Vincent Rutaganira, Mikaeli Muhimana, Ryandikayo and Obed Ruzindana (hereinafter “the amended indictment”);

**CONSIDERING** the Prosecutor’s motion for leave to sever an indictment, filed on 13 March 2000, along with the attachments thereto, and the brief in support;

**CONSIDERING** the Defence’s reply brief, filed on 14 June 2000;

**THE** Chamber hereby decides the said motion on the basis of the written briefs.

**The Indictment**

1. Of the eight accused currently named in the amended indictment, Kayishema and Ruzindana have already been tried together under a separate joint indictment (case no. ICTR-95-1-T), and Bagilishema was severed and is currently being tried under a separate individual indictment (case no. ICTR-95-1A-T). The Chamber observes that the names of these three accused still remain in the amended indictment, even though they have been severed and tried separately. The accused, Mikaeli Muhimana, has been in custody at the UN Detention Facility since 8 November 1999. The remaining four co-accused are still at large.

**The Present Motion**

2. The Prosecution seeks to sever the accused Mikaeli Muhimana from the amended indictment, which contains the names of eight accused, and to hold a trial against Muhimana separately. The motion has been brought under Rule 82(B) of the Rules of Procedure and Evidence (hereinafter “the Rules”) on the ground that the said severance is in the interests of justice. The Prosecution has submitted that the severance will:

- a. Avoid a violation of the accused’s right to be tried without undue delay, as he would not have to await the arrest of the co-accused, who are still at large.
- b. Avoid subjecting the co-accused, still at large, to double jeopardy, in future trials.

- c. Allow allegations unique and relevant to the accused to be incorporated in an amendment to the indictment, to be filed in due course.

3. The Defence has opposed the motion for severance. The Counsel for the accused submitted that Muhimana should be tried together with the co-accused because, in Count 1, all accused are charged together for conspiracy to commit genocide. He has argued that it is in the interests of justice, and would facilitate the defence of the accused, to try the co-conspirators together. Further, that the Prosecution's assertion that a separate trial would be beneficial to the accused, as he would be tried without undue delay, is not well founded, given the gravity of the alleged acts. The Counsel has submitted that the Prosecution has not demonstrated due diligence in its effort to arrest the co-accused, who are still at large.

## **The Deliberations**

### ***Undue Delay***

4. Pursuant to Article 20(4)(c) of the Statute, an accused should be tried without undue delay. The accused was indicted on 28 November 1995, and had remained at large until his arrest on 8 November 1999. Therefore, the accused has been in custody only for about seven months.

5. The Counsel for the accused has stated that it would be beneficial for the accused to await the arrest of the other co-accused, as it would facilitate the presentation of a joint defence, even though it may entail some delay. The Chamber finds some merit in this submission. Further, since the co-accused are charged as co-conspirators in the charge of conspiracy to commit genocide, the Chamber is of the view that it is in the interests of justice for them to be tried together. For these reasons, the Chamber finds that, at this stage, it is in the interest of justice for the accused to be tried along with his co-accused, under the joint amended indictment.

6. In any event, the Prosecution in its motion has not given any indication or produced any evidence, showing that it is ready to start the trial against the accused and therefore, the contention that the severance would result in a speedy trial is unsupported. On the contrary, it appears that the Prosecution is contemplating further amendments to the indictment.

### ***Double Jeopardy in Relation to the Co-accused***

7. The Prosecution has submitted that severance of the accused is necessary to avoid the appearance of double jeopardy in relation to the co-accused. The Chamber observes that, at the present time, it is not known whether the co-accused will be arrested and be tried under the amended indictment. In this regard, no trial date has been fixed for Muhimana or the co-accused. Further, even if a trial was to proceed against Muhimana alone, the case would only consider the responsibility of Muhimana and therefore, there would be no trial *in absentia*.

8. In any event, the Statute provides specifically for the presence of the accused at the trial. Article 20(4) states:

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; . . .

Hence, there is no question of the co-accused being tried *in absentia* and therefore, the risk of double jeopardy does not arise.

9. Although the original indictment has been confirmed on 25 November 1995, almost five years ago, the Chamber has not been informed of the efforts, if any, made by the Prosecution to secure the arrests of the co-accused who are still at large.

***The Incorporation of Allegations Unique and Relevant to the Accused***

10. The Prosecution has failed to show any unique character in the charges against the accused in the proposed severed indictment (Attachment A to the Prosecutor’s motion). On the contrary, the seven counts in the proposed severed indictment, allege that the accused acted together with the co-accused: In Count 1, conspiracy to commit genocide, all the accused are named as co-conspirators; in Counts 2-7, the indictment alleges that the accused acted in concert with four of the co-accused.

11. The Prosecution alleges in its motion that it, “proposes to file an amended indictment which if accepted, would allege fresh facts covering new massacre sites unique to the accused...” (Prosecutor’s Brief in Support at para I). However, this unsupported proposition does not help the present motion.

12. For all the above reasons the Chamber finds that it is not in the interests of justice, at this stage, to grant the Prosecutor’s motion to sever the accused Mikaeli Muhimana, from the amended indictment. However, the Prosecution may, with the necessary supporting material and when it is in a position to proceed with trial, move the Chamber for severance of the accused, at a later stage

**THEREFORE, THE TRIAL CHAMBER;**

**DENIES** the Prosecutor's motion, dated 13 March 2000, for leave to sever an indictment.

Arusha, 6 July 2000

Asoka de Zoysa Gunawardana  
Presiding Judge

Navanethem Pillay  
Judge

Erik Møse  
Judge