



UNITED NATIONS
NATIONS UNIES

ICTR-99-46-I
8-9-2000
(2198-2195)
International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

2198
HM

ORIG: Eng.

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

Registrar: Dr. Agwu Ukiwe Okali

Decision of: 8 September 2000

THE PROSECUTOR
versus
ANDRE NTAGERURA

THE PROSECUTOR
versus
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE

JUDICIAL RECORDS/ARCHIVES
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2000 SEP - 8 P 12: 55

Case No. ICTR-99-46-I

**DECISION ON THE MOTION BY THE ACCUSED ANDRE NTAGERURA FOR
REVOCATION OF AN ORDER, PURSUANT TO RULE 73 OF THE RULES OF
PROCEDURE AND EVIDENCE, REGARDING THE ORDER RENDERED ON 23
AUGUST 2000 BY TRIAL CHAMBER III AND ADDITIONAL MOTION BY THE
ACCUSED ANDRE NTAGERURA TO THE MOTION FOR REVOCATION OF AN
ORDER, PURSUANT TO RULE 73 OF THE RULES OF PROCEDURE AND
EVIDENCE, REGARDING THE ORDER RENDERED ON 23 AUGUST 2000 BY
TRIAL CHAMBER III**

Counsel for the Prosecutor:

Mr. Leonard ASSIRA
Ms. Liliane RASENDRA
Mr. Richard KAREGYESA
Ms. Holo MAKWAIA

Counsel for the Defence:

Mr. Konate FAKHY N.K.
Mr. Henry BENOIT

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

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

BEING SEIZED of the Motion by the Accused Andre Ntagerura for Revocation of an Order, Pursuant to Rule 73 of the Rules of Procedure and Evidence, Regarding the Order Rendered on 23 August 2000 by Trial Chamber III, filed on 29 August 2000 (the “Motion”);

CONSIDERING the Prosecutor’s response to the Motion, filed on 4 September 2000;

NOTING the Defence brief in support of the Motion, filed on 4 September 2000;

BEING SEIZED of the Additional Motion by the Accused Andre Ntagerura to the Motion for Revocation of an Order, Pursuant to Rule 73 of the Rules of Procedure and Evidence, Regarding the Order Rendered on 23 August 2000 by Trial Chamber III, filed on 4 September 2000 (the “Additional Motion”);

RECALLING the Chamber’s oral order to the Defence to file a pre-trial brief in accordance with Rule 73bis(F) of the Rules of Procedure and Evidence of the Tribunal (the “Rules”), made at a Pre-Trial Conference on 23 August 2000 (the “Order”);

NOW CONSIDERS the matter without a hearing solely on the briefs of the parties, pursuant to Rule 73(A) of the Rules.

PLEADINGS BY THE PARTIES

Defence Submissions

1. The Defence argues that the Chamber made the Order without first notifying to the Accused the request for the Order and giving him the opportunity to challenge the request, in contravention of Rule 73(A) of the Rules and in violation of principles of *inter partes* proceedings and the basic rights of the Accused to a just and fair trial.
2. Moreover, the Defence submits, the Order constitutes unequal treatment between the Prosecutor and the Accused since it allows the Accused only 18 days to file a pre-trial brief whereas earlier the Chamber allowed the Prosecutor one month to file its pre-trial brief.
3. Consequently, the Defence requests the Chamber to postpone the implementation of the Order, revoke the Order, and order that a pre-defence conference be held pursuant to Rule 73ter of the Rules.

Prosecutor's Response

4. The Prosecutor responds that the Order was rendered after submissions by the parties and that the Motion constitutes a request which is not provided for in the Rules.
5. The Prosecutor argues that if, from the point of view of the Defence, the presence of the Accused at the Pre-Trial Conference was indispensable, it was incumbent on the Defence Counsel to raise this issue then and not to state later that the Defence Counsel did not represent the Accused at the Pre-Trial Conference.
6. The Prosecutor submits that her verbal request to apply Rule 73bis(F) was made because the Defence did not reply to the Prosecutor's request to admit facts pursuant to Rule 73bis(B)(ii).
7. Finally, the Prosecutor prays the Chamber to declare itself incompetent to consider the Motion of the Defence and to dismiss it as not founded.

FINDINGS

8. The Chamber recalls that pursuant to Rule 73bis of the Rules a Trial Chamber may order the Prosecutor and the defence to take certain measures in order to facilitate trial proceedings. At the pre-trial conference each party is free to pronounce for or against such measures. But it is for the Trial Chamber to take a decision after discussion on the measures by the parties.
9. In this particular case, the Prosecutor made a verbal request to order the Defence to file a pre-trial brief. However, the Chamber acted not on this request, but on the basis of Rule 73bis(F) which empowers a Trial Chamber to order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues. Rule 73bis(F) does not expressly or impliedly impose an obligation on a Trial Chamber to notify an accused person of the intention to order his or her defence to file a pre-trial brief. Consequently, the Order was made in accordance with the Rules.
10. The application of Rule 73bis(F) ought not be considered as an action based on the Prosecutor's request which the Defence seeks to qualify as a motion. However, even if this request were considered to be a motion, the approach of the Defence to this matter is frivolous. The Prosecutor pronounced for the application of Rule 73bis(F) while the Defence opposed it. After this exchange of views, the Chamber took the decision, it could be said, on the submissions of the parties, in strict conformity with Rule 73(A). Thus, in any case, there was no departure from the requirements of the Rules in making the Order.
11. The Rules and practice of the Tribunal do not mandate for the presence of an accused person at a pre-trial conference. The discussions which take place at a pre-trial conference and such orders as a Trial Chamber may issue there do not bear on the rights


of the accused person, but rather are concerned with preparations for and organization of trial. In the case before us, the Accused was represented by his Defence Counsel at the Pre-Trial Conference on 23 August 2000. Indeed, as noted above, his Counsel objected to ordering the Defence to file a pre-trial brief. Thus, the Defence had an opportunity to and did challenge the making of the Order. See Transcript, 23 August 2000, pp 79-82.

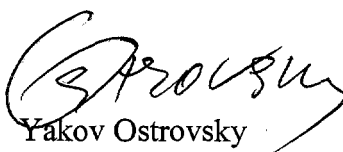
- 12. As for the time period for filing the brief, the Chamber notes that Rule 73bis(F) prescribes that the pre-trial brief be filed not later than seven days prior to the date for trial. The Order mirrors the Rule in this regard.
- 13. Finally, the Defence prayer for a pre-defence conference pursuant to Rule 73ter is premature. Rule 73ter(A) of the Rules expressly sets out that a Trial Chamber may hold a pre-defence conference prior to the commencement by the defence of its case. The Defence disregards that the case before us is not at that stage; rather, this case is at the pre-trial stage.
- 14. The Chamber therefore finds that the arguments presented in the Motion and the Additional Motion lack merit to such an extent that they are frivolous and that the filing of the Motion and the Additional Motion constitutes an abuse of process.
- 15. It is to be hoped that the purpose of the Motion and the Additional Motion is not to delay the proceedings.
- 16. **FOR THESE REASONS, THE TRIBUNAL**

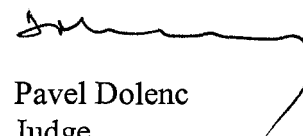
REJECTS the Motion and the Additional Motion.

DIRECTS the Registry, pursuant to Rule 73(E) of the Rules, not to pay fees and costs associated with the filing of the Motion and the Additional Motion.

Arusha, 8 September 2000.


 Lloyd George Williams
 Judge, Presiding


 Yakov Ostrovsky
 Judge


 Pavel Dolenc
 Judge

[Seal of the Tribunal]