

ICTR-99-54A
7/11/2000
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International Criminal Tribunal for Rwanda

TRIAL CHAMBER II

OR: ENG

Before: Judge Laïty Kama, Presiding
Judge William H. Sekule
Judge Mehmet Güney

Registrar: Agwu U. Okali

Decision of: 7 November 2000

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THE PROSECUTOR
v.
JEAN DE DIEU KAMUHANDA

Case No. ICTR-99-54-T

DECISION ON THE DEFENCE MOTION FOR SEVERANCE AND SEPARATE TRIAL FILED BY THE ACCUSED

The Office of the Prosecutor:

Ifeoma Ojemeni
Melinda Pollard

Counsel for the Accused:

Aicha Condé


07.11.2000.

Case No. ICTR-98-54-T

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II of the International Criminal Tribunal for Rwanda (the "Tribunal") composed of Judge Laïty Kama, Presiding, Judge William H. Sekule, and Judge Mehmet Güney;

BEING SEIZED OF the Motion for Severance and Separate Trial filed by the Accused Jean de Dieu Kamuhanda (the Defence's "Motion") filed on 10 October 2000;

CONSIDERING the Prosecutor's Reply to the Defence's Motion filed on 1 November 2000 (the Prosecutor's "Reply");

CONSIDERING the Indictment against Jean de Dieu Kamuhanda and another accused, dated 27 September 1999, confirmed on 1 October 1999 by Judge Navanethem Pillay;

HAVING HEARD the Parties at a hearing held on 7 November 2000;

CONSIDERING the Statute of the International Criminal Tribunal for Rwanda (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), particularly Rule 72 and Rule 82;

CONSIDERING that the Defence applies for waiver of the time limit prescribed in Rule 72 and submits, *inter alia*, that the severance and a separate trial must be granted as it is in the interest of justice that Jean de Dieu Kamuhanda be tried without undue delay;

NOTING that the Prosecutor does not oppose the Defence's Motion and submits also that it is in the interest of justice to grant it, as justice delayed is justice denied;

WHEREAS the Tribunal deems it necessary as a preliminary matter to caution the Parties and to recall to their attention the order for non-disclosure of the name and other identifying particulars of Jean de Dieu Kamuhanda's co-accused, issued on 1 October 1999 by Judge Pillay, further to a request by the Prosecutor;

AFTER HAVING DELIBERATED,

On the admissibility of the Defence's Motion

1. Rule 72(F) provides that failure to comply with the time limits prescribed in this Rule shall constitute a waiver of the rights unless the Trial Chamber grants relief from the waiver upon showing good cause. The Defence has sought relief for the waiver of this time limit, as provided in Rule 72(F). The Trial Chamber notes that the Defence may move for a separate trial pursuant to Rule 82(B) at any time if it is necessary to avoid a conflict of interests that might cause serious prejudice to an accused or to protect the interest of justice.



Case No. ICTR-98-54-T

2. In light of the specific context of the case, the Trial Chamber finds that there is showing of good cause, and that it is in the interests of justice to grant relief for the waiver of this time limit. The Trial Chamber thus waives the prescribed time limit stipulated in Rule 72(A) and considers the Defence Motion admissible.

On the merits of the Defence's Motion

3. Pursuant to Rule 82(B), the Trial Chamber may order a separate trial for the Accused, either to avoid conflicts of interests that might cause serious prejudice to the Accused, or to protect the interests of justice.
4. On the basis of the Tribunal's jurisprudence, the Trial Chamber emphasizes that the purpose of Rule 82(B) is in particular to protect the right of the accused to be tried expeditiously and fairly, taking into consideration the interests of justice. This fundamental protection is enshrined in the provisions of Articles 19(1) and 20(4)(c) of the Statute.
5. In the instant case, the issue of delay is especially pertinent in view of the fact that the co-accused has not, to date, been arrested nor transferred to the Tribunal's Detention Facilities in Arusha. The Trial Chamber notes that the Prosecutor has not provided any information indicating that the said co-accused could be arrested in the near future. Further, the Prosecutor does not oppose the Defence's Motion and even submits that it is in the interest of justice to grant it, as justice delayed is justice denied.
6. Hence, the Trial Chamber finds that insisting in trying Jean de Dieu Kamuhanda jointly with his co-accused would probably result in a significant delay in the start of his trial, which would violate his fundamental right to be tried without undue delay.
7. Consequently, the Trial Chamber finds that the specific circumstances of the instant case, as described above, constitute good cause to believe that a joint trial for the Accused may deprive him of the right to be tried without undue delay, and that, therefore, a severance and a separate trial for the Accused are justified in the interests of justice.

FOR ALL THE ABOVE REASONS,

The Tribunal finds:

1. that the Defence has demonstrated that a severance and a separate trial for the Accused are justified under Rule 82(B);
2. that, in light of this finding and in the interests of justice, the Prosecutor shall file, from the existing confirmed Indictment, a separate indictment which shall reproduce in an identical manner and in the same order all paragraphs and charges pertaining to Jean de Dieu Kamuhanda, and



Case No. ICTR-98-54-T

- 3. that the said separate indictment shall not be considered as an amended indictment and, as such, will not warrant a new initial appearance.


THEREFORE, THE TRIBUNAL

GRANTS, pursuant to Rule 82(B) of the Rules, the Defence motion for a severance and a separate trial;

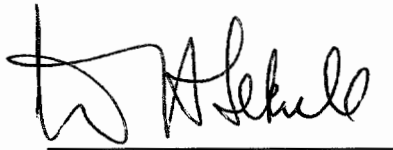
ORDERS the Prosecutor to file a separate indictment pertaining only to Jean de Dieu Kamuhanda from the existing confirmed indictment bearing the Case Number ICTR-99-54, in English and in French, by 15 November 2000; and

FURTHER ORDERS the Registry to assign Case Number **ICTR-99-54A** to the aforementioned separate Indictment pertaining only to Jean de Dieu Kamuhanda;

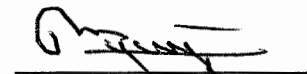
Arusha, 7 November 2000,



 Laity Kama
 Judge, Presiding



 William H. Sekule
 Judge



 Mehmet Güney
 Judge

(Seal of the Tribunal)

