

ICTR-97-20-T
7-2-2001
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER III

Original: English

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

Registrar: Dr. Agwu Ukiwe Okali

Decision of : 7 February 2001

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR
versus
LAURENT SEMANZA

Case No. ICTR-97-20-I

DECISION ON THE PROSECUTOR'S URGENT MOTION FOR REVIEW OF THE
DECISION ON THE PROSECUTOR'S MOTION FOR JUDICIAL NOTICE AND
PRESUMPTIONS OF FACTS PURSUANT TO RULES 94 AND 54
(RULES 120 AND 73)

Counsel for the Prosecutor:
Mr. Chile Eboe-Osuji
Mr. Frederic Ossogo
Ms. Patricia Wildermuth

Counsel for the Accused:
Mr. Charles A. Taku
Mr. Sadikou Ayo Alao

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

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

BEING SEIZED of the Prosecutor’s Urgent Motion for Review of the Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54 (Rules 120 and 73), filed on 24 January 2001 (the “Motion”);

NOTING the Prosecutor’s Memorial, filed on 1 February 2001 (the “Prosecutor’s Memorial”);

CONSIDERING the Defence Application for Time to File a Written Brief and Oral Argument in Prosecution Notice of Motion in the Prosecutor’s Urgent Motion for Review of the Decision on the Prosecutor’s Motion for Judicial Notice [sic] and Presumption of Facts Pursuant to Rules 94 and 54 (RR 120 and 73 [sic]) and Interim Response, filed on 6 February 2001 (the “Defence Application and Interim Response”);

RECALLING the Chamber’s Decision on the Prosecutor’s Motion for Judicial Notice and Presumptions of Facts Pursuant to Rules 94 and 54, dated 3 November 2000 and filed on 6 November 2000 (the “Decision”);

NOW DECIDES the matter pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal (the “Rules”) without a hearing, solely on the briefs of the parties.

PLEADINGS BY THE PARTIES

Prosecutor’s Submissions

1. The Prosecutor requests a review of the Decision on the ground that her previous motion for judicial notice and the Decision thereon preceded the addition of Rule 94(B) of the Rules. This new Rule authorizes a Trial Chamber to take judicial notice of, *inter alia*, adjudicated facts from other proceedings of the Tribunal relating to the matter at issue in the current proceedings. Because Rule 94(B) did not exist at the time the Chamber took the Decision, the Prosecutor submits, judicial notice was not taken of certain adjudicated facts presented in the motion underlying the Decision.
2. Consequently, the Prosecutor pleads that pursuant to the requested review the Chamber should take judicial notice of certain adjudicated facts set out in an appendix to the Motion.

Defence Response

3. In response, the Defence filed an application (i) to allow it until the first week of March 2001 to file a written reply to the Motion, and (ii) to be heard in open court prior to a hearing on the merits of the Prosecutor’s Motion.

4. In the alternative, the Defence urges the Chamber to dismiss the Prosecutor's Motion for various reasons, including (i) that the Motion is a "back door attempt" to get the Chamber to admit evidence based on the Prosecutor's "piecemeal and lopsided" interpretation of certain pieces of evidence, (ii) that the Motion is "a clever attempt" to get the Chamber to admit as evidence and to draw inferences from the third amended indictment, relieving the Prosecutor of the burden of proof of "all material allegations in the indictment" and reducing "the Chamber to a rubberstamp of other Chambers", and (iii) that the Motion "is in part a new set of facts submitted for judicial notice and inferences masquerading as an application for review".

FINDINGS

5. The Prosecutor seeks a review of a prior decision of the Chamber. Article 25 of the Statute of the Tribunal (the "Statute") and Rule 120 of the Rules create the legal basis for review. Taking into account these provisions, the Appeals Chamber has clearly outlined the criteria that must be met in order for a Chamber to carry out a review. In its 31 March 2000 Decision on the Prosecutor's Request for Review or Reconsideration in the case of *Barayagwiza v. Prosecutor*, Case No. ICTR-97-19-AR72, the Appeals Chamber in this regard stated:

[t]here must be a new fact; this new fact must not have been known by the moving party at the time of the original proceedings; the lack of discovery of the new fact must not have been through the lack of due diligence on the part of the moving party; and it must be shown that the new fact could have been a decisive factor in reaching the original decision. Para. 41.

Additionally, the Appeals Chamber observed that "only a final judgement may be reviewed pursuant to Article 25 of the Statute and Rule 120" and interpreted this as follows: "The Chamber would point out that *a final judgement in the sense of the above-mentioned articles is one which terminates the proceedings; only such a decision may be subject to review.*" *Barayagwiza*, para. 49 (emphasis added). In the case before us, the Decision obviously did not terminate the proceedings and consequently is not subject to review.

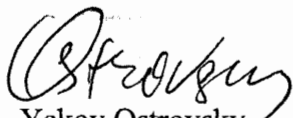
6. Moreover, new law, such as Rule 94(B) in the present case, does not constitute a "new fact" within the meaning of the Tribunal's review provisions and cannot therefore form the basis for review; this is so even in circumstances where review would be otherwise permissible.
7. Since the Chamber does not propose to review the Decision, it is not necessary for the Defence to file an additional written reply to the Prosecutor's Motion and to be heard in open court as requested in its Application.

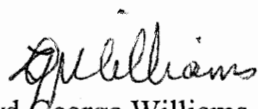
The Prosecutor v. Semanza, Case No. ICTR-97-20-I

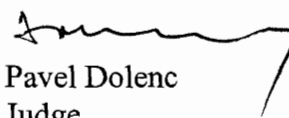
FOR THESE REASONS, THE TRIBUNAL

8. **DENIES** the Prosecutor's Motion.
9. **DISMISSES** the Defence Application for extension of time to file a brief and for a hearing.

Arusha, 7 February 2001.


Yakov Ostrovsky
Judge, Presiding


Lloyd George Williams
Judge


Pavel Dolenc
Judge

[Seal of the Tribunal]