

ICTR-98-44A-T
11/21/2001
(1101-1098)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 11 April 2001

ICTR

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THE PROSECUTOR

v.

Juvénal KAJELIJELI
Case No. ICTR-98-44A-T

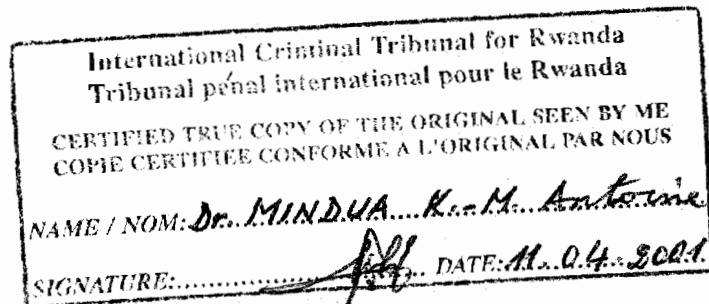
DECISION ON JUVÉNAL KAJELIJELI'S
MOTION IN OBJECTION TO THE PRE-TRIAL BRIEF

The Office of the Prosecutor:

Ken Flemming
Ifeoma Ojemeni
Melinda Pollard
Jayantha Jayasuriya

Counsel for Kajelijeli:

Lennox Hinds
Nkeyi Makanyi Bompaka



11-04-2001

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

SITTING as Trial Chamber II composed of Judges Laïty Kama, Presiding, William H. Sekule and Mehmet Güney (the "Chamber");

BEING SEIZED of the "Defendant's Objections to Pre-trial Brief filed by the Prosecutor Dated 5 February 2001," (the "Motion") filed on 12 March 2001;

CONSIDERING the "Prosecutor's Response to the Defense Communication Titled Defendant's Objections to Pre-trial Brief filed by the Prosecutor Dated 5 February 2001" (the "Prosecutor's Response") filed on 29 March 2001;

CONSIDERING the Statute of the Tribunal (the "Statute"), particularly Articles 6 and 20 and the Rules of Procedure and Evidence (the "Rules"), particularly Rule 94;

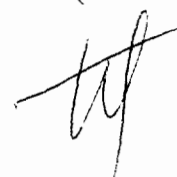
CONSIDERING that the Motion will be decided solely on the basis of the written briefs filed by the Parties, pursuant to Rule 73 of the Rules;

SUBMISSIONS OF THE PARTIES*Defense submissions*

1. The Defense objects to the Prosecutor's attempt to invoke Rule 94 of the Rules in the Pre-trial Brief filed on 5 February 2001. The Defense alleges that, by invoking the said Rule, the Prosecutor violates her obligations under Article 20(3) and Article 6(1) of the Statute.
2. The Defense further objects to the Prosecutor's attempts to broaden and expand the temporal jurisdiction of the Tribunal by requesting the Chamber to hear evidence of alleged acts that occurred prior to 1 January 1994. The Defense requests the Chamber to restrict the Prosecutor from introducing allegations that predate 1 January 1994. The Defense submits that, if the Chamber allows the Prosecutor to expand and to present testimony on facts that predate the temporal jurisdiction of the Tribunal then it will be in violation of Article 7 of the Statute. If so, the Defense will expand its defense and exercise its right to subpoena present government officials in Kigali, Rwanda to appear before the Tribunal.

Prosecutor's submissions

3. The Prosecutor, in objection to the Motion, submits that she has not invoked Rule 94 of the Rules in her pre-trial brief, as alleged by the Defense, but has made reference to the case of *Prosecutor v. Nsengiyumva* (ICTR-96-12-T), "Decision on the Defense Motions Objecting to the Jurisdiction of the Trial Chamber on the Amended Indictment," of 13 April 2000 (the "Nsengiyumva Decision") in the pre-trial brief.
4. Regarding the issue of temporal jurisdiction of the Tribunal, the Prosecutor submits that the issue of the violation of the temporal jurisdiction of the Tribunal was argued and decided upon in the Chamber's "Decision on the Defense Motion Objecting to the Jurisdiction of the Tribunal," rendered in the present case on 13 March 2001 (the "Decision of 13 March 2000").



AFTER HAVING DELIBERATED*As to the alleged invoking of Rule 94 in the Pre-trial Brief*

5. The Defense alleges that the Prosecutor attempts to have judicial notice taken of facts, pursuant to Rule 94 of the Rules, in the pre-trial brief, thereby violating the principle of presumption of innocence under Article 20(3) of the Statute, and that of individual criminal responsibility, under Article 6(1) of the Statute. Indeed, the Defense submits that the Prosecutor requests the Chamber to take judicial notice of prior Decisions of the Tribunal so as to obviate establishing proof against the Accused.

6. The Prosecutor submits that she has not invoked Rule 94 of the Rules in the pre-trial brief, but simply made reference to the Nsengiyumva Decision as being an authority on the extent and nature of evidence that could be presented before the Tribunal in proof of the offence of "Conspiracy to Commit Genocide."

7. As a preliminary matter, the Chamber notes that judicial notice of facts may be taken by a Trial Chamber, in the context of the adversarial procedure envisaged under Rule 94 of the Rules, without encroaching *per se* on the principle of presumption of innocence and that of individual criminal responsibility.

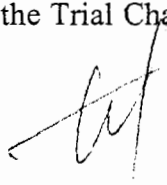
8. The Chamber notes that the purpose of Rule 73bis of the Rules is to notify the Defense and the Trial Chamber of the issues that the Prosecutor will address at trial and of the manner in which they will address them. In the instant case, the Chamber notes that, in the Pre-Trial Brief, the Prosecutor is not in any way seeking for judicial notice to be taken of any facts pursuant to Rule 94 of the Rules, rather that the Prosecutor has brought the Pre-trial Brief under Rule 73bis of the Rules for the reasons stated above.

9. In any event, the Chamber finds the Defense allegations without merit as the Prosecutor only makes reference to the Nsengiyumva Decision as an authority that she may bring evidence predating 1 January 1994. In doing so, the Prosecutor is not requesting the Chamber to take judicial notice of a fact but, rather referring to the authority of a judicial precedent on a legal question.

As to the issue of temporal jurisdiction

10. The Defense alleges further that the Prosecutor attempts to expand the temporal jurisdiction of the Tribunal in the pre-trial brief so that the Chamber will hear witnesses alleging acts and transactions that occurred prior to 1 January 1994. The Prosecutor submitted that the issue of the violation of the temporal jurisdiction of the Tribunal was argued and decided upon in the Decision of 13 March 2001.

11. In the Decision of 13 March 2001, the Chamber was seized of the issue as to whether reference, to events and crimes committed outside of the temporal jurisdiction of the Tribunal should result in the dismissal of the Indictment. The Chamber recalled the jurisprudence of the Tribunal and held that, "Indictments may refer to events or crimes, which occurred prior to 1994, for which evidence may be admissible at trial and on which the Trial Chamber may rely in its judgment for historical purposes or as information."




12. In light thereof, the Chamber considers that this matter is *res judicata* as it has already been finally and conclusively decided upon in the Decision of 13 March 2001.

FOR THE ABOVE REASONS

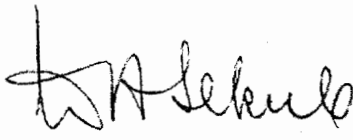
THE TRIAL CHAMBER:

DISMISSES the Defense Motion.

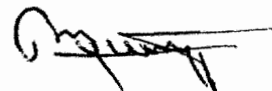
Arusha, 11 April 2001



Laity Kama
Judge, Presiding



William H. Sekule
Judge



Mehmet Güney
Judge

(Seal of the Tribunal)

