

ICTR-96-8-T  
25/4/2001  
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International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

Original: English

**TRIAL CHAMBER II**

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

**Registrar:** Adama Dieng

**Decision of:** 25 April 2001

**THE PROSECUTOR**  
v.  
**Élie NDAYAMBAJE**  
*Case No. ICTR-96-8-T*

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON THE DEFENCE MOTION FOR THE AMENDMENT  
AND FOR THE HARMONIZATION OF THE ACCUSED'S INDICTMENT**

**The Office of the Prosecutor:**

Japhet D. Mono  
Ibukunolu A. Babajide  
Manuel Bouwknecht

**Counsel for the Defence:**

Pierre Boulé  
Frédéric Palardy

25.04.2001.

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

**SITTING** as Trial Chamber II, composed of Judge Laïty Kama, Presiding, Judge William H. Sekule and Judge Mehmet Güney;

**CONSIDERING** that the Accused’s Amended Indictment (the “Amended Indictment”) was filed by the Prosecutor on 11 August 1999, pursuant to the Trial Chamber’s “Decision on the Prosecutor’s Request for leave to File an Amended Indictment” of 2 September 1999;

**BEING SEIZED** of:

A “Requête en exception préjudicielle (Article 72 B) ii) du Règlement de Procédure et de Preuve” filed by the Defence on 7 February 2001 (the « Defence Motion »);

A “Prosecutor’s Reply to Élie Ndayambaje’s Preliminary Motion on Defects in the Form of the Indictment”, filed on 12 March 2001 (the “Prosecutor’s Reply”);

A “Réponse à la Réplique du Procureur (Requête en Exception préjudicielle pour vices de forme de l’Acte d’accusation”, filed on 27 March 2001;

**CONSIDERING** the provisions of the Statute of the Tribunal (“the Statute”), and the Rules of Procedure and Evidence of the Tribunal (the “Rules”), in particular Rule 72 of the Rules;

**HAVING HEARD** the Parties on 12 April 2001;

**WHEREAS** the Chamber notes, with respect to the admissibility of the Defence Motion, that,

- (i) The Motion pertains to defects in the form of the Indictment, with respect to some of the new charges added on 11 August 1999, as well as to the Indictment as it read prior to this amendment;
- (ii) The objections based on defects pertaining to paragraphs of the Indictment as they read prior to the amendment of 11 August 1999, were filed long after expiration of the deadline of Rule 72(A) of the Rules. Indeed, the Prosecutor submits that the Accused was served with the material envisaged under Rule 66(A)(i) well over 12 months ago;
- (iii) So were the objections based on defects pertaining to the new charges, which were to be filed, pursuant to Rule 50(C) of the Rules on 11 October 1999 at the latest;
- (iv) The Defence agrees that their Motion is time-barred under Rule 72. They are however seeking for relief from the waiver under Rule 72(F);



**RECALLING** that time-barred preliminary motions may be declared admissible, pursuant to Rule 72(F) of the Rules, upon a showing of good cause;

**NOTING** that, according to the Defence, the Motion should be reviewed in the interests of justice, in the light of the alleged seriousness of the defects for which corrections are sought, including the lack of precision and the lack of clarity of many factual allegations in support of several Counts against the Accused, and in the light of the need to harmonize the Accused's Indictment with those of the other Accused whose trials were joined to his;

**CONSIDERING** that the Defence further refers to the "Decision on the Defence Motion seeking a separate trial for the Accused Sylvain Nsabimana" rendered in the Case *Prosecutor v. Sylvain Nsabimana* (No. ICTR-97-29A-T) on 8 September 2000, wherein the Preliminary Motion filed out of time by the Defence was reviewed on the merits, in the light of the seriousness of the issues regarding the administration of justice, and contends that the same conclusion should be adopted in respect of the instant Motion;

**NOTING HOWEVER** that,

- (i) As a matter of principle, it is on a case-by-case basis that the Chamber establishes whether good cause exists warranting the waiver from foreclosure;
- (ii) In any event, the Nsabimana Decision referred-to by the Defence (*See, supra*) pertained to different issues than those raised in the present Motion. The said Decision was rendered on a Request for severance, rather than a preliminary objection based on defects in the form of the indictment;
- (iii) Further, Decisions were taken by the Chamber, wherein no waiver for preliminary Motions based on allegations pertaining to the form of the Indictment was granted (*See, notably, Prosecutor v. Sylvain Nsabimana, Case No. ICTR-97-29A-I, "Decision on the Defence Motion to Withdraw Certain Counts of the Indictment Against the Accused Nsabimana, Ordered on 12 August 1999", rendered on 9 May 2000 and Prosecutor v. Alphonse Nteziryayo, Case No. ICTR-97-29-I, "Décision sur la Requête de la Défense aux fins de demander à l'Accusation, la précision et/ou la suppression de certains paragraphes de l'Acte d'accusation", 9 May 2000*);

**CONSIDERING**, as regards the present Motion that,

- (i) The Defence does not explain why no such redress was sought, and waiver of the timeframes under Rule 72 of the Rules asked, soon after Counsel for the Accused was assigned, approximately a year prior to the filing of the instant Motion, in February 2000; and that, moreover,
- (ii) Counsel for the Accused admitted during the hearing of having noted, after his assignment, the defects he is now challenging, and that he did not raise them at the time;

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- (iii) Accordingly, the Chamber does not consider that good cause has been shown, in the instant case, warranting waiver of the debarment;

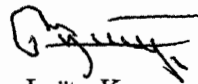
**NOTING** that, in any event, the trial in the present case is scheduled to commence on 14 May 2001; that, pursuant to Rule 72(C) of the Rules, preliminary motions are to be disposed of *in limine litis*, that is, in the view of the Chamber, as soon as possible prior to any trial on the merits; and that, accordingly, reviewing the instant Motion would be against the good administration of justice;

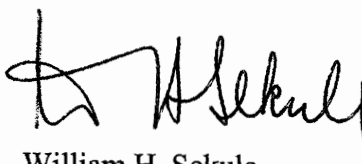
**FOR ALL THE ABOVE REASONS,**

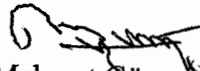
**THE TRIAL CHAMBER**

**DISMISSES** the Defence Motion for the amendment and for the harmonization of the Indictment.

Arusha, 25 April 2001

  
for Laity Kama  
Presiding Judge

  
William H. Sekule  
Judge

  
Mehmet Güney  
Judge

(Seal of the Tribunal)