

ICTR-97-29-1
30/5/2001
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Mehmet Güney
Judge Erik Møse

Registrar: Adama Dieng

Date: 30 May 2001

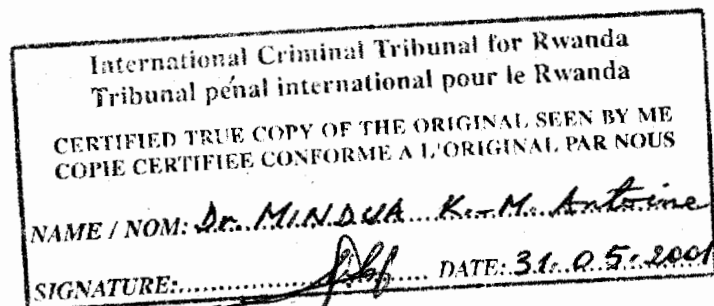
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THE PROSECUTOR
v.
SYLVAIN NSABIMANA
Case No. ICTR-97-29-T

DECISION ON THE PROSECUTOR'S
MOTION FOR A DECLARATORY RULING

The Office of the Prosecutor
Sylvana Arbia
Japhet Mono
Jonathan Moses
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Counsel for Nsabimana:
Josette Kadji
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30.05.2001

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

CONSIDERING the assumption, pursuant to Article 13(3) of the Statute of the Tribunal (the "Statute"), of Judge William H. Sekule as Presiding Judge of Trial Chamber II, on 16 May 2001;

CONSIDERING further the temporary assignment of Judge Erik Møse to Trial Chamber II, in replacement of Judge Laïty Kama, pursuant to a Decision rendered on 16 May 2001, pursuant to Rules 15(E) and 27 of the Rules of Procedure and Evidence of the Tribunal (the "Rules"), by Judge Navanethem Pillay;

SITTING THEREFORE as Trial Chamber II of the Tribunal, composed of Judge William H. Sekule, Presiding, Judge Mehmet Güney and Judge Erik Møse (the "Chamber");

BEING SEIZED of:

- (i) The "Prosecutor's Motion for a Declaratory Ruling", filed on 23 March 2001;
- (ii) The "Réponse de la Défense à la Requête du 23 mars 2001 déposée par le Procureur aux fins d'un jugement déclaratif", filed on 9 April 2001;
- (iii) The "Prosecutor's Reply to Sylvain Nsabimana's Response to the Motion for a Declaratory Ruling", filed on 17 April 2001;

CONSIDERING that the Motion has been ruled upon on the sole basis of the written briefs filed by the Parties, pursuant to Rule 73 of the Rules;

CONSIDERING the Statute and the Rules, specifically Rule 73 of the Rules;

SUBMISSIONS OF THE PARTIES

The Prosecutor

1. The Prosecutor essentially submits that:
 - (i) On 12 August 1999, the Chamber orally ruled, with respect to the Defense allegation that they had not complied with prior Orders to amend the Indictment of the Accused, that "the amended indictment [as filed by the Prosecutor the same day] cured the defect and rendered the issue moot".
 - (ii) This holding is contradicted by its French interpretation, which reads "[l]a Chambre ordonne (...) au Procureur [de] réparer ce défaut". This resulted in uncertainty in the records and Defense allegations made on various occasions, including at the Status Conference of 2 February 2001, that the Prosecutor has not complied, specifically, with the Decisions of 24 September 1998 and 21 May 1999.

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- (iii) The English version is the only authoritative version of the Oral Decision of 12 August 1999, for the Decision was read out in English.
2. The Prosecutor accordingly requests, pursuant to Rule 73 of the Rules, that a declaratory ruling be rendered in the interests of justice, particularly since the Accused's trial is soon to commence. Specifically, the Prosecutor moves the Trial Chamber to declare:
 - (i) That the Chamber orally dismissed Nsabimana's Extremely Urgent Motion by its Oral decision of 12 August 1999 and settled as *res judicata* this issue of compliance with the Decisions of 24 September 1998 and 21 May 1999; or, alternatively,
 - (ii) That the Decision of 12 August 1999 granting the Prosecutor's Amended Indictment superseded and rendered moot the issue of compliance with the previous Decisions of 24 September 1998 and 21 May 1999, as established in the jurisprudence of the Tribunal; or, alternatively,
 - (iii) That the modified Indictment filed on 28 June 1999 in effect complied with the Decisions of 24 September 1998 and 21 May 1999; and,
 - (iv) That: (a) Nsabimana's allegation that the Prosecutor, to date, has not complied with the Decisions of 24 September 1998 and 21 May 1999 is unfounded; (b) Nsabimana's objections to alleged defects in the form of the amended indictment are time-barred; (c) the Amended Indictment of 12 August 1999 remains the valid charging document and serves as the basis of the Accused's trial.

Defense submissions

3. The Defense submits that the Motion should be declared inadmissible on the following grounds:
 - (i) It was improperly filed under Rule 73 of the Rules: it refers to defects in the form of the Accused's Indictment and, therefore, it should be entertained under Rule 72 of the Rules and declared time-barred under the said Rule;
 - (ii) The declaratory ruling requested by the Prosecutor pertains to matters of fact whereas such a ruling can only be issued on matters of law or on matters relating to the rights of an accused.
4. The Defense alternatively contends that, should the Chamber consider the Motion to be admissible, it should be dismissed on the following grounds:
 - (i) As to the discrepancy between the English and the French version of the Oral Decision of 12 August 1999, the latter should prevail as it is in the favour of the Accused;
 - (ii) The Prosecutor's Motion is a disguised appeal or revision of the Chamber's Decisions of 24 September 1998, 21 May 1999 and 12 August 1999.

WAS

AFTER HAVING DELIBERATED

Admissibility of the Motion

- 5. Contrary to the Defense submissions, the Chamber notes that the Prosecutor's Motion, in merely requesting that a declaratory ruling be rendered on the contents of a Decision rendered by the Chamber, is not an objection based on defects in the form of the Accused's Indictment, within the meaning of Rule 72(B)(ii) of the Rules.
- 6. The Chamber further finds that the Defense does not establish on what grounds a Declaratory Ruling could only pertain to points of law, as opposed to points of fact. The Chamber recalls in this respect that the Tribunal's jurisdiction extends to the law as well as to the facts, within the boundaries defined thereof in the Statute.
- 7. The Chamber accordingly declares the Motion admissible.

Merits of the Motion

Preliminary matter: History of the Accused's Indictment

- 8. The Chamber recalls, for the sake of clarity:
 - (i) That the original Indictment, confirmed on 16 October 1997 by Judge Aspegren, was amended on 18 November 1998, following the Chamber's "Decision on the Defense Motion for the Amendment of the Indictment, Withdrawal of Certain Charges and Protective Measures for Witnesses" rendered on 24 September 1998 (the "Decision of 24 September 1998");
 - (ii) That, on 21 May 1999, the Chamber held, in its "Decision on the Prosecutor's Urgent Motion for Stay of Execution of [the] Decision of 24 September 1998 (...)" (the "Decision of 21 May 1999"), that "the Prosecutor ha[d] not complied with the orders made in the Decision of 24 September 1998" (at para. 15 of the Decision of 21 May 1999) and accordingly ordered the latter to comply with the Decision of 24 September 1998 within 14 days from the filing, on 17 June 1999, of the Decision of 21 May 1999. Contrary to allegations made by the Defense, the Prosecutor timely filed the amended Indictment, on 28 June 1999;
 - (iii) That, however, following the filing of the said amended Indictment, the Defense continued to allege that the Prosecutor had not complied with the Chamber's Orders made in the Decisions of 24 September 1998 and 21 May 1999;
 - (iv) That, in an oral Decision rendered on 12 August 1999, which addressed, *inter alia*, the Defense allegations above, the Chamber found "that the Prosecutor [had] not fully compl[ied] with the Chamber's Orders in its [D]ecision of 21 May 1999, in particular, the [O]rder to provide further explanation in relation to paragraph 3.14 of the Indictment".

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- 9. It is important to note at this stage that, on 12 August 1999, the date of the hearing of a Prosecutor's Motion for leave to amend the Accused's Indictment, the Prosecutor filed an amended version of the Indictment of 28 June 1999; and that, accordingly, the Accused's amended Indictment of 12 August 1999 superseded the previous versions of the said Indictment. The Chamber notes in this regard that, in its Reply, the Defense only makes reference to the Accused's Indictment as filed on 28 June 1999, as though this Indictment was the one currently in force.

The Order of 12 August 1999

- 10. According to the English version of the Transcript of the proceedings of 12 August 1999, the Chamber admonished the Prosecutor for his non-compliance with the Decisions of 24 September 1998 and 21 May 1999. However, the Chamber further held that "the amended indictment [filed on 12 August 1999] cured the defect and rendered the issue moot".
- 11. The Chamber, however, notes that the corresponding ruling, in the French version of the Transcript of the same day, neither mentions the above-mentioned filing of the Amended Indictment, nor the dismissal of the Defense allegations. According to this version of the Transcript, the Prosecutor was ordered to "réparer ce défaut" (See, French Transcript of 12 August 1999, at page 6).
- 12. The Prosecutor requests the Chamber to declare that the English version of the above Decision is authoritative. The Defense replies that, according to a fundamental principle of criminal procedure, in the case of the existence of two conflicting interpretations of a disposition, the version that favours the Accused should prevail. Therefore, according to the Defense, the French version of the Transcript should prevail.
- 13. The Tribunal, in its jurisprudence, has recognised the value of the principle referred-to by the Defense (See, notably, The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, "Judgement", 2 September 1998, at para. 319 and 501; The prosecutor v. Édouard Karemera, Case No. ICTR-98-44-T, "Decision on the Defense Motion, Pursuant to Rule 72 of Rules of Procedure and Evidence, Pertaining to, *inter alia*, Lack of Jurisdiction and Defects in the Form of the Indictment", 25 April 2001 at para. 8).
- 14. However, the Chamber does not consider that this principle applies in the instant case as, since the Oral Decision was read out in English, only the English transcript is to be considered as authoritative. The Chamber further notes in this respect that it clearly appears from a comparison of the two versions of this extract of the Decision that the French interpretation is erroneous, as it is in total contradiction with the words used, as well as the Order given, in English.

15. The Chamber therefore directs the Registry to issue a Corrigendum, to be annexed to the French version of the Transcript of 12 August 1999 and always distributed with it, to specify that the oral Decision rendered by the Chamber, at page 6 of the said Transcript, is to be read: "La Chambre adresse un avertissement au Procureur, cependant, l'Acte d'accusation amendé a réparé ce vice de forme, de sorte que la question est désormais caduque"

Valid Indictment against the Accused

16. The Chamber further emphasizes that the Indictment filed on 12 August 1999 is the valid charging document with respect to the Accused, and is the basis of the Accused's Trial.

FOR THE ABOVE REASONS, THE TRIBUNAL

I. PARTIALLY GRANTS the Prosecutor's Motion;

II. DECLARES:

- (A) That the English version of the oral Decision of 12 August 1999 is authoritative;
- (B) That the Amended Indictment of 12 August 1999 is the valid charging document against the Accused.

III. DIRECTS the Registry to issue a Corrigendum to the French version of the Transcript of 12 August 1999 which shall be notified to the Chamber and to the Parties by Monday 4 June 2001 before close of business, and which shall thereafter be annexed to the French version of the Transcript of 12 August 1999 and always distributed with it, to specify that the oral Decision rendered by the Chamber, at page 6 of the said Transcript, is to be read: "La Chambre adresse un avertissement au Procureur, cependant, l'Acte d'accusation amendé a réparé ce vice de forme, de sorte que la question est désormais caduque".

Arusha, 30 May 2001,

William H. Sekule
Presiding Judge

Mehmet Güney
Judge

Erik Møse
Judge

