



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

Original: English

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 8 June 2001

THE PROSECUTOR
v.
Joseph KANYABASHI

THE PROSECUTOR
v.
Elie NDAYAMBAJE

THE PROSECUTOR
v.
Sylvain NSABIMANA & Alphonse NTEZIRYAYO

THE PROSECUTOR
v.
Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI
Case No. ICTR-98-42-T

2001 JUN - 8 P 3:35
ICTR
UNION RECOGNITION DIVISION

**DECISION ON THE MOTION OF THARCISSE MUVUNYI FOR LEAVE TO MAKE
SUBMISSIONS AS AMICUS CURIAE IN THE BUTARE TRIAL**

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: *John M. Kiyeen*

SIGNATURE: *[Signature]*

DATE: *08/06/2001*

Kiyeen Taylor 8/6/01

[Handwritten initials]

08.06.2001

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 by a Decision rendered, pursuant to Rule 15(E) and 27 of the Rules of Procedure and Evidence of the Tribunal (the “Rules”), by Judge Navanethem Pillay on 16 May 2001, “as a consequence of the death of Judge Laïty Kama”;

SITTING THEREFORE as Trial Chamber II of the International Criminal Tribunal for Rwanda (the “Chamber”) composed of Judges William H. Sekule, Presiding, Mehmet Güney and Erik Møse.

BEING SEIZED of:

- i. The Defense’s “Extremely Urgent Motion by Tharcisse Muvunyi for Leave to Make Submissions as *Amicus Curiae*,” (the “Applicant”) filed on 3 May 2001;
- ii. The “Prosecutor’s Response to the Extremely Urgent Motion of Tharcisse Muvunyi for Leave to make Submissions as *Amicus Curiae*,” (the “Prosecutor’s Response”) filed on 18 May 2001;

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), specifically Rules 74 and 53(A) of the Rules;

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

The Applicant’s Submissions

1. The Applicant seeks the Tribunal’s authorization to make submissions as *Amicus Curiae* in the trial against Kanyabashi, Ndayambaje, Nsabimana, Nteziryayo, Nyiramasuhuko and Ntahobali (the “Butare Trial”). In its submissions, the Applicant requests that the Chamber issue an Order requiring the non-disclosure to the public and the media by the Tribunal, the Parties and the witnesses in the Butare Trial of any documents, evidence or information that identifies the Accused, otherwise than by way of pseudonym until the conclusion of the Accused’s trial.

2. The Applicant seeks to appear as an *Amicus Curiae* in the Butare Trial in accordance with Rule 74 of the Rules, in order to protect the rights of the Accused provided for under Article 20 of the Statute.

Prosecutor’s submissions

3. Objecting to the Applicant’s requests, the Prosecutor submits that, an Accused in one trial does not have *locus standi* in the separate trial of another Accused. The Prosecutor argues that the Applicant is not a Party to the Butare case, therefore there is no legal basis under which the Applicant can appear and make submission in this case.

4. In any case, the Prosecutor argues that Rule 74 of the Rules provides that a State, organization or person can only be granted leave to appear and make submissions as *Amicus Curiae* if the Chamber considers it desirable for the proper determination of the case. The Prosecutor submits that "the case" in this instance refers to the case presently before the Tribunal, and the issue that a person may be granted leave to address the Tribunal is an issue in respect to the case before the Tribunal, and not an issue that may or may not arise in another case.

5. The Prosecutor further submits that the Applicant's request for non-disclosure is unfounded for lacking legal support and that Rules 52 and 53 of the Rules have no application to the present Motion.

6. The Prosecutor therefore requests that the Motion is dismissed for lack of evidential basis and because the Accused lacks standing to bring such a Motion.

7. In addition, the Prosecutor requests that the Chamber sanction Counsel by Ordering the non-payment of fees, pursuant to Rule 73(E) of the Rules, supported by the jurisprudence of the Tribunal for bringing a Motion, which has no legal and factual basis and therefore frivolous.

AFTER HAVING DELIBERATED

8. In consideration of this matter, the Chamber notes that only the Prosecutor has responded to the application and therefore the Chamber will decide the Motion in the light of the Response thereof.

9. Furthermore, the Chamber realizes that it is not seized of the Muvunyi Case, pending before the Tribunal, and only considers the matter because the Applicant requests appearance before the Trial Chamber seized of the Butare Case, which is the Chamber.

As to whether the Accused can submit as Amicus Curiae

10. The Chamber recalls the provisions of Rule 74 of the Rules, upon which both the Applicant relies to make its request and the Prosecutor relies to object to the Applicant's requests, as follows, "The Chamber may if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to appear before it and make submissions on any issue specified by the Chamber."

11. Upon careful consideration of the jurisprudence of the Tribunal, the Chamber notes that leave to appear as *Amicus Curiae* is granted for the following reasons: a) that one "has strong interests in or views on the subject matter before the court" as was noted in the case of *Prosecutor v. Bagosora*, Case No. ICTR-96-7-T, "Decision on the *Amicus Curiae* Application by the Government of the Kingdom of Belgium," of 6 June 1998; b) that it is "[d]esirable ...to enlighten the Tribunal on the events that took place in Rwanda in 1994" as was decided in the Case of *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, "Order Granting Leave for *Amicus Curiae* to Appear" Decision of 12 February 1998 and c) that "[i]t may be useful to gather additional legal views...with respect to the legal principles involved, not with respect to the particular circumstances of this or any other case." As was the Chamber's view in the case of *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, "Decision on the Kingdom of Belgium's Application to file an *Amicus Curiae* Brief and on the Defense Application to

Strike Out the Observations of the Kingdom of Belgium Concerning the Preliminary Response by the Defense.”

12. The Applicant seeks to make submissions as *Amicus Curiae* arguing that, “for the proper determination of the case” provided for under Rule 74 of the Rules, includes a determination of the case that protects the rights of the Accused as a Defendant yet to be tried. The Applicant seeks to make submissions in order to protect the rights of the Accused who is allegedly named as a co-Conspirator in the Butare Trial and to whom several witnesses will make references to, which will result in hostile publicity towards him, to the effect that potential witnesses will be unwilling to attend his trial and testify on his behalf, causing him prejudice to the fair trial of his own case. The Applicant submits that a determination of the Butare Trial that did not protect the rights of the Accused would not be a proper determination.

13. The Chamber notes that none of the criteria upon which the Tribunal has granted leave for an Applicant to appear as *Amicus Curiae* have been met in the instant case. In fact the Applicant seeks leave in order to protect the rights of the Accused and not to shed light on the Butare Trial. For that purpose the Chamber finds that the submissions will not assist the Trial Chamber for the proper determination of the Butare Trial in which the Applicant seeks leave to make submissions. The Chamber finds further that, submissions by a third party should be in the “interest of Justice” in the sense that it will assist the court in the carrying out of its task. This intervention should relate to legal issues arising in the matter before the Court and not otherwise. The Chamber considers that the Applicant’s request is misplaced and is therefore, denied.

Regarding the Prosecutor’s Request that the Applicant be sanctioned

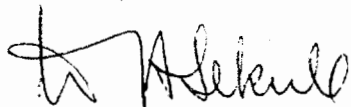
14. As regards the Prosecutor’s request that the Applicant be sanctioned for filing of a frivolous Motion, the Chamber is of the view that the Motion, although denied for being misplaced, does not amount to a frivolous Motion within the purview of Rule 73 (E) of the Rules.

FOR THE ABOVE REASONS, THE TRIBUNAL;

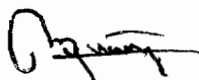
DENIES leave to Tharcisse Muvunyi to make submissions as *Amicus Curiae* in the Butare Trial.

DENIES the Prosecutor’s request to sanction Defense for the Applicant pursuant to Rule 73 (E) of the Rules..

Arusha, 8 June 2001



William H. Sekule
Presiding Judge



Mehmet Güney
Judge



Erik Møse
Judge

(Seal of the Tribunal)

