ICTR-97-21-T
8/6/2001
(1075-1072)

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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

Registry: Adama Dieng

Date: 8 June 2001

THE PROSECUTOR

v.

PAULINE NYIRAMASUHUKO
and
ARSÈNE SHALOM NTAHOBALI

Case No. ICTR-97-21-T

DECISION ON THE DEFENCE MOTION TO SUPPRESS CUSTODIAL STATEMENTS BY THE ACCUSED

(Rules 73, 47(H) ii), 63, and 92 of the Rules; Article 20 of the Statute)

The Office of the Prosecutor:

Silvana Arbia
Japhet Mono
Jonathan Moses
Adesola Adeboyejo
Manuel Bouwknecht

Counsel for Arsène Shalom Ntahobali:

René Saint-Léger
James Michael Bailey

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

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 "Motion to Suppress Custodial Statements by Accused Ntahobali" under Rules 73, 47(H) (ii), 63, 92 and Article 20(4) (the "Motion"), filed on 25 April 2001;

ii) the "Prosecutor's Response to Ntahobali's Motion to Suppress Custodial Statements" (the "Response") to which was attached "Annex A" consisting of the transcripts of the interrogation with the Accused on 24 July 1997, filed on 3 May 2001;

iii) the "Addendum: Submission of Additional Legal Authority" in support of the Prosecutor's Response (the "Addendum"), filed on 3 May 2001;

iv) the "Reply to the Prosecutor's Response to Ntahobali's Motion to Suppress Custodial Statements" (the "Reply"), filed on 28 May 2001;

NOTING the Interoffice Memorandum of Court Management Section dated 27 April 2001 informing the Parties that, in accordance with Rule 73 of the Rules, the Chamber will consider the Motion on the basis of the written briefs only;

NOTING the Interoffice Memorandum by Court Management Section dated 28 May 2001 informing the Parties on the Extension of time for filing Replies to the Prosecutor's Responses;

NOTING FURTHER the Indictment against Pauline Nyiramasuhuko and Arsène Shalom Ntahobali confirmed on 29 May 1997;

CONSIDERING the Statute of the Tribunal specifically Article 20(4) of the Statute, and the Rules notably Rules 42, 63 and 92 of the Rules.

SUBMISSIONS OF THE PARTIES:

Defense Submissions

1. In the Motion, the Defense recalls that, on 23 July 1997, Accused Arsène Shalom Ntahobali (the "Accused") was arrested at his residence in Nairobi. The Accused was questioned by Mr. Robert Petit, a Legal Officer for the Office of the Prosecutor with the Tribunal (the "interrogator"), on 24 July 1997. Also present and participating was Mr. Paul Dobbie, an investigator for the Prosecutor of the Tribunal (the "investigator"). The Defense

further recalls that, on 24 July 1997, the Accused was taken to the United Nations Detention Facility in Arusha, Tanzania (the "UNDF"), where the questioning continued on 26 July 1997.

2. The Defense submits that during the interrogation on 24 and 26 July 1997, the interrogator did not act in conformity with the highest standards of fairness towards the Accused since the Accused did not have a broad understanding of the whole matter essential for a valid, voluntary statement of an Accused in custody under all circumstances.

3. The Defense alleges that neither the interrogator nor the investigator ever mentioned "being attached or related to" the Office of the Prosecutor of the Tribunal. The interrogator identified himself as a lawyer and, in that way, led the Accused to believe that he was a lawyer, implying that the Accused was protected.

4. The Defense submits that the Accused was informed of his right to a lawyer by the interrogator *pro forma* only. He was not advised on the serious consequences with regard to the charges pending against him if he were to talk to the interrogator. The Defense contends that, had the Accused had an opportunity to consult with a lawyer and had he been aware of the fact that he had already been indicted pursuant to Article 17 of the Statute, he would not have given a statement.

5. Furthermore, the Defense argues that the Accused was not in a position to carefully consider the consequences of waiving his right to a lawyer because 1) he had no prior experience with the Police, 2) he was easily influenced by persons in a position of authority, and 3) he was confused by the wording of the Indictment and the legal language used by the interrogator.

6. The Defense submits that the Accused's fundamental rights were violated, specifically his rights pursuant to Article 20(4) a) and b) of the Statute and Rules 63 and 92 of the Rules. These provisions set out conditions for the Accused to be interrogated. The administration of justice would be brought into disrepute were the Trial Chamber to receive the custodial statements of the Accused. The Defense therefore prays the Trial Chamber to declare that the custodial statements given by the Accused were not given freely and voluntarily and should not be used as evidence.

Prosecutor's Submissions

7. In response, the Prosecutor argues that no fundamental right of the Accused has been violated and that the submissions of the Defense are wrong in fact and in law.

8. In a preliminary point on admissibility, the Prosecutor states that the Defense Motion contains a number of allegations that are not substantiated by direct evidence, as provided for under Article 27(2) iii) of the Directive for the Registry of the Tribunal (the "Directive"), by way of an affidavit indicating that the Accused's statements were not freely and voluntarily given, as presumed by Rule 92 of the Rules and, thus, not admissible as evidence.

9. The Prosecutor points out that the issue of admissibility of the Accused's statements can be resolved with a *"voir dire"* procedure, which could take place during the trial, in order to allow both parties to cross-examine an affiant, as used in common-law jurisdictions when resolving issues of admissibility of statements.

10. As for the factual background, the Prosecutor submits that the Accused surrendered himself voluntarily to the ICTR and that his questioning was conducted in a friendly and relaxed manner. The Prosecutor points to Annex A of her response, and submits that the Accused understood his rights and freely and voluntarily chose to give the interview.

11. The Prosecutor argues that the interrogator, who correctly identified himself as a Legal Officer with the Tribunal, had provided the Accused with a copy of the Indictment and had read the charges to the Accused.

12. Furthermore, the Prosecutor alleges that the underlying reason for the belated attempt to suppress the custodial statements may well be that the Accused made false statements to the interrogator and investigator during the interview and therefore does not wish for his statements to be apparent before the Trial Chamber.

13. The Prosecutor therefore requests that the Trial Chamber dismiss the Motion because the Defense failed to prove any violation of the Statute or the Rules, particularly Article 20 and Rules 63 and 92.

Defense Reply

14. The Defense acknowledges that there is no direct evidential basis for the factual submissions in the Motion at this time. The Defense contends, however, that an affidavit from the Accused was prepared, but that under circumstances not specified in their reply the affidavit was not filed.

AFTER HAVING DELIBERATED,

15. Having considered the submissions of the Parties as well as the circumstances of the case, the Chamber notes that the statements made by the Accused during the interrogations on 24 and 26 July 1997, have not as yet been tendered as evidence, if at all, by the Prosecutor. The Chamber is of the view that only if and when the Prosecutor seeks to use the said statements as evidence, will the Defense be in a position to object to the admissibility of these statements. The Chamber would then decide whether a *"voir dire"* procedure, such as the one suggested by the Prosecutor, should take place. At this stage of the proceedings, however, the Chamber finds no reason to hold such a procedure and determine this matter.

FOR THE ABOVE REASONS, THE TRIBUNAL:

DISMISSES the instant Motion.

Arusha, 8 June 2001,

William H. Sekule Presiding Judge	Mehmet Güney Judge	Erik Møse Judge

(Seal of the Tribunal)