



ICTR-99-46-T
13-3-2002
(2784 - 2781)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before: Judge Lloyd George Williams, Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Adama Dieng

Date: 13 March 2002

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THE PROSECUTOR
v.
ANDRÉ NTAGERURA
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE

Case No. ICTR-99-46-T

**SEPARATE AND CONCURRING DECISION OF JUDGE WILLIAMS ON
IMANISHIMWE'S DEFENCE MOTION FOR JUDGEMENT OF
ACQUITTAL ON COUNT OF CONSPIRACY TO COMMIT GENOCIDE
PURSUANT TO RULE 98 *BIS***

The Office of the Prosecutor:
Mr Richard Karegyesa
Ms Holo Makwaia
Ms Andra Mobberley

Counsel for the Accused:
Mr Benoît Henry
Mr Hamuli Rety
Mr Vincent Lurquin
Mr Seydou Doumbia
Ms Marie-Louise Mbida
Mr Pierre Fofe

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),

SITTING as Trial Chamber III, composed of Judges Lloyd George Williams, presiding, Yakov Ostrovsky and Pavel Dolenc (the Chamber);

BEING SEIZED of the “Requête de la Défense de Samuel Imanishimwe aux fins d’acquittement du chef d’entente en vue de commettre le génocide en application de l’article 98 *bis* du Règlement de Procédure et de Preuve” dated 22 January 2002 (the “Motion”);

CONSIDERING the “Prosecutor’s Response to Motion for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence filed by the Defence for Samuel Imanishimwe” dated 6 February 2002 (the “Prosecutor’s Response”);

CONSIDERING the “Prosecutor’s Brief on Defence Motion for Acquittal Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence filed by the Defence for Samuel Imanishimwe” dated 27 February 2002 (the “Prosecutor’s Brief”);

CONSIDERING the “Conclusions écrites de la defence de Samuel Imanishimwe en réplique aux réponses du procureur des 06 et 27 Février 2002 a la Requête de la Défense de Samuel Imanishimwe aux fins d’acquittement du chef d’entente en vue de commettre le génocide en application de l’article 98 *bis* du Règlement de Procédure et de Preuve” dated 28 February 2002 (the “Defence Reply”);

HAVING ALSO HEARD the oral argument of the parties on 5 and 6 March 2001;

HAVING RULED IN AN ORAL DECISION on this Motion on 6 March 2001, when a majority of the Chamber (Williams and Ostrovsky) entered a judgement of acquittal in respect of the charge of Conspiracy to Commit Genocide against Imanishimwe;

I NOW PUT REASONS FOR MY SEPARATE CONCURRING OPINION IN WRITING:

1. I have had the opportunity of listening to the oral reasons of Judge Ostrovsky and the oral dissenting decision of Judge Dolenc. While I agree with the conclusion of Judge Ostrovsky to acquit the Accused Imanishimwe, I respectfully disagree with his reasoning that the prosecution has failed to adduce any evidence of conspiracy. Rather, I am of the opinion that, although the prosecutor has presented some indirect evidence of conspiracy, no reasonable trier of fact could convict on this evidence.

2. Rule 98 *bis* provides:

If, after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

3. This Chamber recently reviewed the test for a judgement of acquittal in *Prosecutor v. Semanza* ICTR-97-20, Decision on Defence Motion for a Judgement of Acquittal et seq., 27 September 2001. The Chamber confirmed that a judgement of acquittal will be entered when a Chamber concludes that the evidence, if believed, is insufficient for a reasonable

trier of fact to find that guilt has been proved beyond a reasonable doubt. This is consistent with the Appeals Chamber's explanation in *Prosecutor v. Sikirica et al.*, Case No IT-95-8, Judgment on Defence Motions to Acquit, 3 September 2001:

The true test to be applied on a motion for acquittal under Rule 98 *bis* is not whether there is evidence which satisfies the Trial Chamber beyond reasonable doubt of the guilt of the accused, but rather, whether there is evidence on which a reasonable Trial Chamber could convict.


4. The motion for a judgement of acquittal pursuant to Rule 98 *bis* is premised on the presumption of innocence guaranteed by Article 20(3) of the Statute and on the fundamental principle that the burden is on the Prosecutor to prove the guilt of the Accused beyond a reasonable doubt. It also promotes judicial economy.
5. After considering the evidence adduced during the Prosecution's case, I am of the view that the Prosecution has failed to present sufficient evidence for any reasonable trial chamber to convict Imanishimwe of conspiring to commit genocide. This inquiry into sufficiency of evidence has both a qualitative and a quantitative aspect. First, the Chamber must be satisfied that there is a sufficient quality of evidence which, if believed, could lead a reasonable Trial Chamber to Convict. As the Trial Chamber of the ICTY explained when facing a similar question, "that standard is not met by any evidence; there must be some evidence which could properly lead to a conviction".¹ Sufficiency cannot be determined in a vacuum. One must consider the totality of the evidence in the case.
6. I stress that this analysis does not amount to a further review of the Indictment, but is rather a contextual examination of the Prosecutor's evidence. As I stated in relation to a motion by Co-accused Ntagerura, this is not the appropriate time to challenge defects in the Indictment². I also note that the Indictment passed muster at both the confirmation and preliminary challenge stages, in which the Prosecutor is held to a lower standard of proof.
7. Second, the Chamber must be satisfied that there is a sufficient quantity of appropriate evidence which, if believed, could lead a reasonable Trial Chamber to convict. While it is unnecessary to engage in a detailed assessment of the evidence in this case, I note in particular that the evidence presented by the Prosecutor fails to demonstrate that the Accused entered into an agreement with others to commit genocide. While the Prosecutor has lead indirect evidence that she hopes could show that the Accused may have acted in concert with others and which could thereby form the basis of an inference that an agreement had been reached, the Prosecutor admits that there was no direct evidence of this agreement. I am therefore of the view that no reasonable Chamber could properly convict Imanishimwe on this count.
8. In these circumstances, I am of the opinion that it would be a waste of precious resources and judicial time to require the Defence of Imanishimwe to answer to the charge of conspiracy. I recall that Imanishimwe still stands charged with seven other counts of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions.

¹ *Prosecutor v. Kordic and Cerkez*, Case No IT-95-14/2, Decision on Defence Motions for Judgment of Acquittal, 6 April 2000, para. 26 (emphasis in original).

² Transcripts of 5 March 2002, p. 4.

9. Accordingly, I join Judge Ostrovsky in **GRANTING** the Defence Motion and enter a judgement of acquittal in respect of Count 19.

Arusha, 13 March 2002.


Lloyd George Williams, Q.C.
Judge, Presiding

(Seal of the Tribunal)