

ICTR-99-52-T
04-09-2002
(29510-29508)

29510



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before: Judge Navanethem Pillay, presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Decision of: 3 September 2002

THE PROSECUTOR
v.
JEAN-BOSCO BARAYAGWIZA

Case No. ICTR-99-52-T

JUDICIAL
2002 SEP -11 A. 11: 01
Mh

DECISION ON THE DEFENCE'S MOTION FOR PROVISIONAL RELEASE
OF JEAN-BOSCO BARAYAGWIZA

Rule 65 of the Rules of Procedure and Evidence

For the Prosecutor:

Mr Stephen Rapp
Mr William Egbe
Ms Simone Monasebian
Ms Charity Kagwi
Mr William Mubiru

For the Defence:

Mr Giacomo Barletta Caldarera
Mr Alfred Pognon

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

SITTING as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse, and Judge Asoka de Zoysa Gunawardana (“the Chamber”);

BEING SEIZED OF a motion by Defence Counsel for Mr Barayagwiza entitled “Requête ex art. 65 du Règlement de procédure et de preuve”, filed on 19 July 2002 (“the motion”);

CONSIDERING the Prosecutor’s “Response to Defence Motion Under Rule 65 of the Rules”, filed on 12 August 2002;

HEREBY decides the motion.

SUBMISSIONS OF THE PARTIES

1. The Defence submits that the Accused’s detention for more than six years is against international human rights instruments and the legislation of various States which demonstrate that detention subject to trial ought to be as brief as possible. The Defence avers that in the present case there have been unreasonable procedural delays not the fault of the Accused, who therefore should be released.
2. The Prosecutor submits that the motion is *res judicata*, as there is no substantive difference between it and a Defence motion filed on 17 August 2001. In addition, she submits that the Accused has refused to attend his trial since its commencement and refuses to recognize the Tribunal’s authority or legitimacy. In the Prosecutor’s view, the Accused has no claim for provisional release.

DELIBERATIONS OF THE CHAMBER

3. The Chamber observes that the text of the present motion is, but for insignificant variations, the same as that of an earlier motion filed by Counsel Barletta Caldarera on 17 August 2001, entitled “Requête urgente de mise en liberté de Monsieur Jean-Bosco Barayagwiza”. The earlier motion was decided orally on 27 August 2001. The Chamber noted on that occasion that the motion did not address the requirements of Rule 65. In the course of the decision dismissing the motion, the Presiding Judge stated:

“If you are relying on Rule 65, you [should] make an appropriate motion and satisfy the criteria set out in Rule 65 for a decision to be taken by the Chamber in respect of provisional release. Such a course is still open to you.”¹

4. Despite that direction the present motion comes no closer to addressing the essential criteria of Rule 65, namely that there exist “exceptional circumstances” and

¹ Transcripts of 27 August 2001, pp. 134-5.

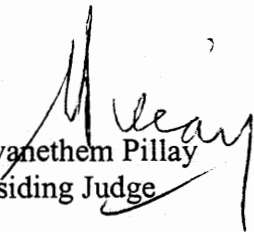
that if released the Accused will appear for trial and will not pose a danger to any person. For these reasons, the motion is denied. It is inexcusable that Counsel resubmitted the text of a motion already ruled upon. In the Chamber's opinion the motion is frivolous and constitutes an abuse of process under Rule 73.


FOR THE ABOVE REASONS, THE CHAMBER:

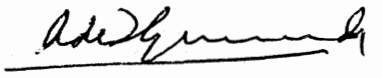
DENIES the motion.

ORDERS the Registrar to retain payment of fees associated with the motion and costs thereof.

Arusha, 3 September 2002


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

(Seal of the Tribunal)

