

ICTR-98-44A-T
13-9-2002
(1940-1935)

1940
Mwamp



United Nations
Nations Unies

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 13 September 2002

The PROSECUTOR

v.

Juvénal KAJELIJELI

Case No. ICTR-98-44A-T

JUDICIAL
2002 SEP 13 10 10 AM
ICTR

**DECISION ON KAJELIJELI'S MOTION FOR PARTIAL ACQUITTAL
PURSUANT TO RULE 98 BIS**

Office of the Prosecutor
Mr. Ken C. Fleming, Q.C.
Ms. Ifeoma Ojemeni

Counsel for the Accused
Professor Lennox S. Hinds
Professor Nkeyi M. Bompaka

KW

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

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Winston C. Matanzima Maqutu and Judge Arlette Ramaroson (the "Chamber");

BEING SEIZED of:

- i. The Defence "Motion for Judgement of Acquittal on Counts 1 through 11 with Regard to Command Responsibility pursuant to Article 6(3), and Counts 10 & 11 in their Entirety of the Indictment Pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence", filed on 19 August 2002 (the "Defence Motion");
- ii. The Prosecution's "Response to Defence Motion for Judgement of Acquittal filed by the Accused Kajelijeli on 19 August 2002", filed on 29 August 2002 (the "Prosecution Response");
- iii. The Defence "Defendant's Response to Prosecutor's Opposition to Motion for Judgement of Acquittal Pursuant to 98 *bis*", filed on 9 September 2002 (the "Defence Reply")¹;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence² (the "Rules"), particularly Rule 98 *bis*, which states that:

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 filed within seven days after the Prosecutor's case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

NOW CONSIDERS the matter solely on the basis of the written briefs of the Parties, pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE PARTIES

1. The Defence make an application to the Chamber to enter a judgement of acquittal, pursuant to Rule 73 and Rule 98 *bis* of the Rules, in respect of all Counts under Article 6(3) of the Statute (in relation to superior-subordinate responsibility), and in respect of Counts 10 and 11 of the Indictment (in relation to Common Article 3 and Additional Protocol II of the Geneva Conventions) in their totality.

¹ According to the initial deadlines set for Prosecution Response and Defence Reply, communicated to the Parties through the Court Management Services (CMS), this Defence Reply may have been considered out of time. CMS have, however, informed the Chamber that there was a delay of several days in the transmission of the Prosecution Reply to the Defence by fax due to some technical problems. For this reason the Chamber deems the Defence Reply to have been properly made within the given time frames.

² As amended at the 12th Plenary Session of the Tribunal (5-6 July 2002).

AW

Article 6(3) Responsibility (Counts 1 through 11 of the Indictment)

2. The Defence accept that the doctrine of “command responsibility” extends beyond the responsibility of military commanders to encompass civilian superiors in positions of authority- as stated in the *Celebici* Judgement³. However, they maintain that an examination of the totality of the trial record shows that the Prosecution have failed to present sufficient evidence upon which a reasonable trial chamber could conclude that the Accused, acting in the capacity of *bourgmestre* during the temporal jurisdiction of the Tribunal, exercised the requisite “command responsibility” of civilian superiors pursuant to Article 6(3) of the Statute.
3. The Defence submit that it is the actual relationship of command, whether *de jure* or *de facto*, that is required in order to establish “command responsibility”, and that the exercise of *de facto* authority must be accompanied by “[t]he trappings of the exercise of *de jure* authority”, as defined in the *Celebici* Judgement⁴. They submit that the Prosecution has failed to provide sufficient proof that a reasonable trial chamber could find the Accused individually liable under the doctrine of “command responsibility”, pursuant to Article 6(3) of the Statute in Counts 1 through 11 of the Indictment.
4. The Prosecution reply that the Defence have narrowed the application of Article 6(3) to the fact that the Accused was neither *bourgmestre* at the time of the alleged offences, nor was he *de facto bourgmestre*. The Prosecution contend that the case against the Accused extends to the fact that he was influential in the founding and the leadership of the *Interahamwe*, a civilian militia exercising a similar discipline to the military, and that during the events in question, he held a *de facto* position of command within the *Interahamwe*.
5. The Prosecution provide references to evidence presented in support of their position that the Accused has a case to answer in relation to Article 6(3) responsibility⁵.
6. The Defence cite the Prosecution claim that “the Accused was influential in the founding and leadership of the *Interahamwe*”, and that “[t]he *Interahamwe* was a civilian militia exercising a similar discipline to the military”. The Defence submit that in order for the Accused to be required to answer the charges in relation to Article 6(3) of the Statute, it must be shown that the Prosecution have provided sufficient proof on both of these allegations. In relation to the first allegation, the Defence submit that no Prosecution Witness has given testimony that the Accused had the requisite trappings of authority and that he could exercise effective control over his subordinates within the meaning of Article 6(3). In relation to the second allegation, the Defence submit that the Prosecution have failed to provide any proof in the presentation of their case which supports the claim that the *Interahamwe* was a civilian militia exercising a similar

³ *Prosecutor v. Zenjnil Delalic, Zdravo Mucic, Hazim Delic and Esad Landzo*, Judgement of 16 November 1998, at paras. 357-363.

⁴ *Ibid.* para. 646.

⁵ The Prosecution provide references to extracts from the testimonies of Witnesses GAO, GDO, GBG, GBE, GBV, GBH and GDD.

[Handwritten signature]

discipline to the military and that, therefore, the Chamber should enter a judgement of acquittal in respect of individual responsibility contained in Article 6(3) of the Statute.

Charges in Relation to Violations of Common Article 3 and Additional Protocol II of the Geneva Convention (Counts 10 and 11 of the Indictment)

7. The Defence submit that the Prosecution have failed to provide sufficient evidence upon which a reasonable trial chamber could find that the Accused violated Common Article 3 and Additional Protocol II of the Geneva Conventions of 1949, and therefore, that the Chamber should enter a judgement of acquittal in respect of Counts 10 and 11 of the Indictment.
8. The Prosecution concede that they have presented insufficient evidence to require the Accused to answer in respect of Counts 10 and 11 of the Indictment.

DELIBERATIONS

9. As a preliminary matter, the Chamber notes that according to Rule 98 *bis* of the Rules, a Motion for judgement of acquittal should, in principle, be filed within seven days after the close of the Prosecution case. The Chamber is aware that the Prosecution case closed before the 12th Plenary Session of the Tribunal, where Rule 98 *bis* of the Rules was amended from a previous version that did not include the present time limits for the filing of a Motion under this Rule. Rule 6(C) of the Rules states that “[a]n amendment [to the Rules] shall enter into force immediately, but shall not operate to prejudice the rights of the accused in any pending case”. The Chamber views that a strict application of the amended Rule 98 *bis* of the Rules in this particular case would prejudice the rights of the Accused. Accordingly, the Chamber grants an exception to the strict application of this Rule pursuant to Rule 6(3) of the Rules, and will consider the Defence Motion.

Charges in Relation to Violations of Common Article 3 and Additional Protocol II of the Geneva Convention (Counts 10 and 11 of the Indictment)

10. The Chamber takes note that the Parties are in agreement that insufficient evidence has been presented to require the Accused to answer in relation to the charges contained in Counts 10 and 11 of the Indictment.
11. The Chamber finds that insufficient evidence has been presented in order to require the Accused to answer in relation to the charges contained in Counts 10 and 11 of the Indictment. Accordingly, the Chamber decides that a Judgement of Acquittal should be entered in respect of these charges.



Article 6(3) Charges (Counts 1 through 9 remaining)

- 12. The Chamber now moves to consider the Defence application to enter a judgement of acquittal on the remaining Counts of the Indictment in relation to individual responsibility based upon Article 6(3) of the Statute, Counts 1 through 9 of the Indictment.
- 13. The Defence submissions use the language of "command responsibility". The Chamber recalls Article 6(3) of the Statute, which states that:

The fact that any of the facts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

The Chamber notes that the language used by the Statute refers to "superior-subordinate responsibility". As pointed out by the Prosecutor, this language is important because it reflects a legislative intent to include a civilian relationship, and not just one based within a military structure.

- 14. The Chamber notes the Defence argument that Article 6(3) of the Statute cannot apply, considering that the Accused was neither *bourgmestre* nor *de facto bourgmestre* during the events of April 1994, to which the charges against the Accused in the Indictment relate. The Prosecution replies that the Accused was influential in the founding and leadership of the *Interahamwe*, a civilian militia. The Chamber agrees with the submissions of the Prosecution that the case against the Accused, with regard to individual criminal responsibility under Article 6(3) of the Statute, is not restricted to a determination of whether he was a *de facto bourgmestre* during the alleged events, but rather whether or not the Accused exercised the authority required in order to incur individual responsibility as a superior within the framework of Article 6(3).
- 15. It appears to the Chamber that the Accused occupied a position of authority and influence within the *Interahamwe* during the events of 1994 and that he gave orders, which were extensively obeyed within the commune. The Chamber does not consider, at this stage of the trial, the evidence adduced to be insufficient to sustain a conviction on the counts of the indictment based on Article 6(3) responsibility. The Chamber further notes that, as it stated in *Kamuhanda*⁶, the reliability and credibility of evidence are matters to be judicially determined at the end of the trial. The Chamber denies the Defence application to enter a judgement of acquittal in respect of Counts 1 through 9 based on Article 6(3).

⁶ *Prosecutor v. Jean de Dieu Kamuhanda*, Decision on Kamuhanda's Motion for Partial Acquittal Pursuant to Rule 98 bis of the Rules of Procedure and Evidence, 20 August 2002, paras 19 and 25.

1935

Prosecutor v. Juvénal Kajelijeli (Case No. ICTR-98-44A-T)

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Defence Motion in part, and:

ENTERS A JUDGEMENT OF ACQUITTAL in respect of Counts 10 and 11 of the Indictment.

DENIES the Defence Motion in all other Respects.


Arusha, 13 September 2002



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge