

ICTR-95-1B-I
(784-782)
27/11/2002

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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
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TRIAL CHAMBER I

Before: Judge Navanethem Pillay, presiding
Registry: Adama Dieng
Date filed: 27 November 2002

THE PROSECUTOR

V.

MIKA MUHIMANA

Case No. ICTR-95-1-B-I

JUDICIAL RECORDS/ARCHIVES
ICTR
2002 NOV 27 P 5: 35
Adama Dieng

DECISION ON THE DEFENCE'S EXTREMELY URGENT MOTION TO ANNUL
TRIAL CHAMBER 1'S DECISION ON PROVISIONAL RELEASE DATED 1
OCTOBER 2002

Office of the Prosecutor

Charles Adeogun-Phillips

Wallace Kapaya

Counsel for the Defence

Prof. Nyabirungu Mwene Songa

Richard Kazadi Kabimba

lh

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

SITTING as Judge Navanethem Pillay designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence of the Tribunal ("the Rules");

BEING SEIZED OF the Defence's Extremely Urgent Motion filed on 8 October 2002, pursuant to Rule 73 of the Rules, for the annulment of the Trial Chamber 1's Decision of 1 October 2002 on Provisional Release and the setting aside of its Decision of 6 November 2001 on the translation of Prosecution documents into French and Kinyarwanda;

CONSIDERING THAT at this juncture, it is not necessary to have a response from the Prosecutor since the Trial Chamber does not intend to consider the merits of the motion;

NOW CONSIDERS the matter solely on the Defence brief, pursuant to Rule 73 (A) of the Rules.

DISCUSSION

The Defence has filed this motion, pursuant to Rule 73 of the Rules. However, no specific Sub-section of the Rule has been referred to. Rule 73 reads:

Rule 73: Motions

- A. Subject to Rule 72, either party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Trial Chamber, or a Judge designated by the Chamber from among its members, may rule on such motions based solely on the briefs of the parties, unless it is decided to hear the motion in open Court.
- B. Decisions rendered on such motions are without interlocutory appeal.
- C. Where a date has been set for the hearing of a motion, including a preliminary motion, any additional motions to be heard on that date and any supporting material to the motions must be filed at least ten days before the hearing of the motion. Failure to observe this Rule will mean that the later motion will not be considered on the hearing date, nor will any adjournment of the original motion be granted on the basis of subsequent motions filed, save in exceptional circumstances.
- D. A responding party shall, thereafter, file any reply within five days from the date on which Counsel received the motion.
- E. In addition to the sanctions envisaged by Rule 46, a Chamber may impose sanctions against Counsel if Counsel brings a motion, including a preliminary motion that, in the opinion of the Chamber, is frivolous or is an abuse of

process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof.

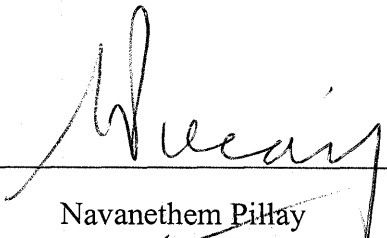
- F. Notwithstanding the time limits in Rule 72(A), the time limit in the present Rule applies.

It is readily apparent that the motion is praying the Trial Chamber to annul its own Decision. The motion does not fall within any of the Sub-sections of Rule 73 neither does Rule 72(D) of the Rules on interlocutory appeals apply. Appeals and reviews fall strictly within the domain of the Appeals Chamber as provided in Articles 24 and 25 of the Statute of the International Criminal Tribunal for Rwanda ("the Statute") and Part Seven (Appellate Proceedings) and Part Eight (Review Proceedings) of the Rules. Thus, the Chamber does not have appellate and review powers per se unless directed by the Appeals Chamber. The Defence Counsel should have familiarized himself with the Tribunal's Rules of Procedure before unnecessarily burdening the Chamber with his motion.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

1. **DECLARES** this motion inadmissible.
2. **DENIES** costs for this motion, pursuant to Rule 46 (C) of the Rules.

Arusha, 27 November 2002.



Navanethem Pillay
President

Seal of the Tribunal