



UNITED NATIONS
NATIONS UNIES

ICTR-99-52-T
09-04-2003
(32082-32078)

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S. Mussa

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER I

OR: ENG

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

Registry: Mr. Adama Dieng

Decision of: 8 April 2003

THE PROSECUTOR
v.
FERDINAND NAHIMANA
HASSAN NGEZE
JEAN BOSCO BARAYAGWIZA
(Case No. ICTR-99-52-T)

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**DECISION ON THE DEFENCE REQUEST FOR EXTENSION OF TIME WITHIN
WHICH TO FILE EXPERT REPORT OF PETER CADDICK-ADAMS**

Counsel for Ferdinand Nahimana:

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis

The Office of the Prosecutor:

Mr. Stephen Rapp
Mr. William Egbe
Mr. Alphonse Van
Ms. Charity Kagwi
Ms. Simone Monasebian
Mr. William Mubiru

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 Z. Gunawardana;

BEING SEIZED OF a Defence request, filed on 29 March 2003, to extend the time in which to file the Expert Report of Mr. Peter Caddick- Adams;

CONSIDERING the Prosecution’s response, filed on 2 April 2003, in which the Prosecution objects to the calling of any Expert Witness with less than 21 days advance notice of the Expert’s Report;

CONSIDERING that on 31 December 2002, at the request of the Trial Chamber, the Defence of Ferdinand Nahimana submitted for the consideration of the Judges a summary of anticipated evidence to be given by proposed Defence Experts, including Mr. Peter Caddick-Adams;

CONSIDERING the Decision of 24 January 2003, which was confirmed on 25 February 2003 in which the Chamber permitted the Defence to call Mr. Caddick-Adams.

TAKING INTO ACCOUNT the Scheduling Order issued on 26 March 2003, which schedules Mr. Caddick-Adams to testify on 5-6 May 2003;

CONSIDERING Rule 94bis of the Rules which provides for Expert Witnesses;

HEREBY DECIDES the said Defence motion upon parties’ briefs.

INTRODUCTION

1. On 3 October 2002, the Chamber issued a “Decision on The Prosecution’s Motion to Compel Defence Compliance” and at paragraph 6), it stated:

“The Defence Counsel shall:

- a) Provide the Trial Chamber, the Prosecutor and other Defence Counsel, the full statement of each intended Expert Witness to be called and a Curriculum Vitae in respect of each Expert witness, not less than twenty-one days prior to the date on which the Expert is expected to testify, as provided under Rule 94bis;”
2. In the 13 December 2002 “Decision On The Defence Motion To Re-Instate The List Of Witnesses” at paragraph 3, the Defence is reminded to adhere to the 3 October Decision and provide the Prosecution with their expert reports “not less than” 21 days in advance of each expert’s testimony.
 3. On 24 January 2003, in a decision on Defence Expert Witnesses, the Trial Chamber held that, Mr. Caddick-Adams’s evidence on the role of the media, the use of propaganda during wartime and his testimony on civil defence systems is relevant and may be of assistance to the Chamber in its deliberations. Consequently, it allowed the Defence to call him as an Expert Witness in the defence of Ferdinand Nahimana. In its 25 February 2003 Decision concerning the reconsideration of the Chamber’s

earlier decision on Defence Expert Witnesses, the Chamber maintained its views on some Defence Expert Witnesses including, Mr. Caddick-Adams and reiterated its 24 January 2003 Decision. On 26 March 2003, the Chamber issued a Scheduling Order and re-stated its earlier Decision of 3 October 2002 and categorically stated that :

“The Trial Chamber recalls its decision dated 3 October 2002 and orders that the names, curriculum vitae and Reports of each Expert witness be furnished by the Defence to the Prosecutor and other Defence Counsel not less than twenty-one days prior to the date on which the Expert is expected to testify, as provided under Rule 94bis.”

4. The Scheduling Order issued on 26 March 2003 provides for the testimony of Mr. Caddick-Adams to be heard on 5-6 May 2003. The date for disclosure of the Report would be 14 April 2003 at the latest.

SUBMISSIONS OF THE PARTIES

The Defence

5. The Defence submits that the prevailing circumstances are entirely outside its control and that “exceptional circumstances” exist as indicated below.
6. The Defence submits that:
 - a) Mr. Caddick-Adams, who is a member of the British Military Reserve Forces, was called up by the British Government to serve in his capacity as media advisor in the current military operation in the Gulf region and he had to oblige with the order;
 - b) The Defence had contacted him about his Report before his departure to the Gulf Region and he had indicated that he hoped to work on it whilst in the Gulf;
 - c) To date, the Defence has not had contact with him since his departure for the Gulf but understands that he is in Qatar and the Defence is continuing in its attempts to make contact with him either directly or indirectly. However, the Defence is not able to give any indication of the progress he has made on the Expert Report;
 - d) It may not be possible to obtain a report from Mr. Caddick-Adams at any time prior to the conclusion of evidence in the trial and that in light of the prevailing situation in the Middle East; he may not be able to testify in the trial. However, if a report is forthcoming from him within the 21-day period, the Defence would like to be permitted to use it.

The Prosecution

7. The Prosecution argues that:

- a) The oral Order of 12 July 2002 required the Nahimana Defence to disclose the names of all of its intended factual and expert witnesses by 22 August 2002 and Mr. Caddick-Adams' name was not on the Defence's list of 22 August 2002;
- b) The oral Decision of the Trial Chamber dated 2 December 2002 obliged all Defence teams to immediately provide the Prosecution and the Trial Chamber with a list of all of its intended factual and Expert witnesses, whether, or not, they agreed to testify. Consequently, the Defence on 11 and 12 December 2002, moved to include Mr. Caddick-Adams as a defence witness;
- c) At a 7 November 2002, Status Conference, the Trial Chamber reminded defence counsel that the defence "ought to have been prepared and ready with [its] defence case the day the Prosecution closed its case" and stated that it intended to close the Nahimana case in the January 2003 session, and the Ngeze case in a March 2003 session, but that in any event the defence case was to be closed in March 2003.
- d) At a status conference in late January 2003, the Trial Chamber indicated that the defence case will close in March 2003 although there was a possibility of a short spill-over session in April 2003;
- e) The extension for disclosing Prosecution Experts Reports did not deprive the Defence of the statutory 21-day advance disclosure Rule since the Defence received the Reports of all Prosecution experts 3-8 months in advance of their testimony, and in two languages.

DELIBERATIONS

8. The Chamber has considered the submissions of the parties and recalls its various decisions on the subject of Expert witnesses, particularly its 3 October Decision. The Chamber has given the Defence ample opportunity to file an Expert Report and reminded the Defence on 2 December 2002 that "there are some effects if you do not comply, and that is, you stand the risk of not being allowed to call the witness."¹ The Defence has not had contact with Mr. Caddick-Adams since his departure to the Gulf on or about 13 February 2003. It is not in a position to say whether the witness will have his report ready before 14 April 2003 or by any extended date that the Trial Chamber may allow. Furthermore, it acknowledges that the prevailing situation in the Middle East may mean that the witness is unable to testify in the trial.
9. In the circumstances, the Trial Chamber is of the view that the Nahimana Defence has not shown due diligence and therefore further extensions of time cannot be granted because it will cause inordinate delay in the trial which has already taken a long time to conclude.

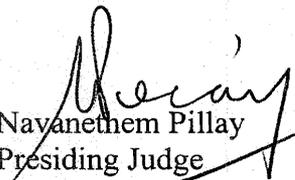
¹ Transcript 2 December 2002, p. 148, lines 6-8



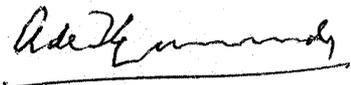
FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

DENIES the Defence request for extension of the time within which to file the Expert Report of Mr. Caddick-Adams.

Arusha, 8 April 2003.


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

Seal of the Tribunal

