

ICTR-99-46-T
2-6-2003
(3923 - 3920)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3923
#1M

Original

Language: English

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Q.C., Presiding
Judge Yakov Ostrovsky
Judge Pavel Dolenc

Registrar: Adama Dieng

Date: 2 June 2003

THE PROSECUTOR

v.

**ANDRÉ NTAGERURA
SAMUEL IMANISHIMWE
EMMANUEL BAGAMBIKI**

CASE NO. ICTR-99-46-T

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ORIGINAL RECORDS ARCHIVES
ICTR

Decision on the Defence Motions to Modify the Scheduling Order

Office of the Prosecutor:

Richard Karegyesa
Holo Makwaia
Andra Mobberley

Defence Counsel:

Benoît Henry
Hamuli Rety
Marie Louise Mbida
Jean Pierre Fofe
Vincent Lurquin
Seydou Doumbia

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
("TRIBUNAL")**

SITTING as Trial Chamber III, composed of Judges Lloyd G. Williams, Q.C., presiding, Yakov Ostrovsky, and Pavel Dolenc ("Chamber");

BEING SEISED of the *Requête De La Défense De Samuel Imanishimwe Aux Fins De Modification Du Délai De Dépôt Des Conclusions Ecrites: Articles 73, 85 Et 86 Du Règlement De Procédure Et De Prévues, 19 Et 20 Du Statut* filed 29 May 2003 ;

BEING SEISED of the *Requête En Extension Des Délais Pour Le Dépôt Des Mémoires Et Visant A Requérir De La Chambre Une Ordonnance Pour La Traduction En Langue Française Du Mémoire Final Du Procureur* filed on 29 May 2003;

BEING SEISED of the *Requête En Extension Et Dissociation Des Délais Pour Le Dépôt Des Mémoires Et Aux Fins De Traduction Des Réquisitions Ecrites (sic) Du Procureur En Vertu Des Articles 3, 54 Et 86 Du Règlement De Procédure Et De Preuve, L'Article 13(6) De La Directive A L'Intention Du Greffe Du TPIR Et Les Articles 19, 20 Et 31 Du Statut Du Tribunal Pénal International Du Rwanda* filed on 30 May 2003;

RECALLING the Chamber's Scheduling Order dated 22 May 2003 which sets the date for the filing of the parties' final trial briefs as 18 June 2003 and the date for closing arguments as 23 May 2003;

NOW decides the matter on the basis of the written briefs of the Defence pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("Rules").

IMANISHIMWE DEFENCE SUBMISSIONS

1. The Imanishimwe Defence requests the Chamber to modify the Scheduling Order. First, the Imanishimwe Defence argues that the date set for the filing of the final trial brief, 18 June 2003, does not provide sufficient time for it to prepare its written submissions. The Defence notes that after the close of its case on 3 February 2003, it was focused on the presentation of the Bagambiki Defence and then on the briefing related to the Prosecutor's motion for rebuttal. The Imanishimwe Defence next argues that the Chamber should modify the filing dates for the final trial briefs so that it has an opportunity to respond to the Prosecutor's brief. The Defence asserts that this position is supported by Articles 19 and 20(4) and points to this practice of Trial Chambers I and II.

BAGAMBIKI DEFENCE SUBMISSIONS

2. The Bagambiki Defence also requests that the Chamber modify its decision of 21 May 2003 to allow for a reasonable delay between the filing of the Prosecutor's final trial brief and the final trial briefs for the Defence. The Defence also seeks a reasonable delay between the presentation of all parties submissions and the closing arguments to allow the Registry to provide the parties with translation. To support its arguments, the Bagambiki Defence points to the practice of Trial Chambers I and II. It further asserts that its proposed procedure is consistent with Articles 19 and 20, which

guarantee the presumption of innocence and the Accused's right to be informed without delay in a language he understands. Finally, the Defence requests that the date for submission of the final trial briefs be later than 18 June 2003 because it has not had sufficient time to prepare since the close of its case and because it has an unspecified scheduling conflict between 15 and 30 June 2003.

NTAGERURA DEFENCE SUBMISSIONS

3. The Ntagerura Defence also requests that the Chamber modify its decision of 21 May 2003 in order to allow the Defence to file its final trial brief after having an opportunity to consider the Prosecutor's final trial brief. In addition, the Defence seeks an order requesting the Prosecution to file its final trial brief in French and that the time period for the filing of the Defence's final trial brief commence from the date the French version of the Prosecutor's brief is made available. Finally, the Ntagerura defence requests that it be provided with the final trial briefs of the Imanishimwe Defence and the Bagimbiki Defence two weeks prior to the commencement of closing arguments. In support of its requests, the Ntagerura Defence cites to the practice of Trial Chambers I and II and national jurisdictions as well as to Article 19 and 20.

DELIBERATIONS

4. The Chamber has not awaited the Prosecution's response to the Defence motions in light of its disposition and its need to promptly inform the parties of its decision.

5. The Chamber notes that the Prosecutor's case closed on 21 November 2001, the Ntagerura Defence case closed on 2 October 2002, the Imanishimwe Defence case closed on 3 February 2003, and the Bagambiki Defence case closed on 3 April 2003. During the 3 April 2003 status conference after the close of all of the parties' cases, the Chamber indicated that it would allow the Prosecutor to file a motion seeking leave to call rebuttal evidence. The presentation of rebuttal evidence, however, is not a matter of right. Thus, the Presiding Judge urged the parties to begin work on their closing arguments.¹

6. The Chamber finds that the approximately seventy five days from the close of all evidence in this case on 3 April 2003 and the date set for the filing of the final trial briefs is sufficient for the preparation of these written submissions.

7. It should be further noted that the period from 21 November 2001, when the Prosecutor closed its case, until 23 June 2003, the date set for the commencement of closing arguments, is a year and seven months. In addition, there was a period of nearly three months between the close of the Prosecution case and the commencement of the first Defence case on 4 March 2002. In the Chamber's opinion, the Defence teams have had more than ample time to prepare their responses to the Prosecution's case.

8. Therefore, with regard to the particular circumstances of this case, the reliance by the Defence on Articles 19 and 20 concerning the time needed to prepare the final trial briefs is not founded.

¹ T. 3 April 2003 p. 11 (status conference)(closed session).



9. Rule 86(B) provides that "a party shall file a final trial brief with the Trial Chamber not later than five days prior to the day set for the presentation of that party's closing arguments." This provision does not expressly provide for the parties to respond to each others submissions in the final trial brief, unlike Rule 86(A), which provides that the parties may present rebuttal and rejoinder during oral argument. Moreover, the Chamber notes that the final trial brief is a response by each party to the totality of the evidence and arguments presented during the course of trial, not necessarily to each others view of the case. That opportunity is clearly preserved in Rule 86(A) with respect to closing arguments.

10. Moreover, in the Chamber's opinion, the final trial brief is solely for the Chamber's benefit. Indeed, Rule 86(B) reflects this when it states that the brief should be filed "with the Trial Chamber." Therefore, questions about its timely translation for the benefit of the Defence or about allowing a right of response do not arise.


11. The Chamber has also considered the approach of Trial Chambers I and II concerning the submission of the final trial briefs and the presentation of closing arguments. This practice is not required by either the Rules or the Statute.


12. In addition, the Chamber expects that the Prosecution and all Defence teams will complete their oral arguments by Friday, 27 June 2003.

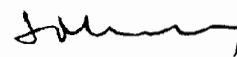
FOR THE FOREGOING REASONS, THE TRIBUNAL:

DENIES the Defence motions in their entirety.

Arusha, 2 June 2003


Lloyd G. Williams, Q.C.
Judge


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

Seal of the Tribunal

