



ICTR-98-42-T
27-06-03
(7370-7367)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

7370
musing

Or: ENG

TRIAL CHAMBER II

Before: Judge William H Sekule, *Presiding*
Judge Arlette Ramaroson

Registrar: Mr Adama Dieng

Date: 26 June 2003

The PROSECUTOR v Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI
Case No. ICTR-97-21-T

The PROSECUTOR v Sylvain NSABIMANA & Alphonse NTEZIRYAYO
Case No. ICTR-97-29A&B-T

The PROSECUTOR v Joseph KANYABASHI
Case No. ICTR-96-15-T

The PROSECUTOR v Elie NDAYAMBAJE
Case No. ICTR-96-8-T

[Joint Case No. ICTR-98-42-T]

2003 JUN 26 16:00
ICTR
JUDICIAL RECORDS ARCHIVES

SCHEDULING ORDER IN THE MATTER OF PROCEEDINGS UNDER RULE 15BIS(D)

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

SITTING as Trial Chamber II composed of Judges William H SEKULE, *Presiding*, and Arlette RAMAROSON (the 'Chamber'), pursuant to Rule 15bis(D) of the Rules of Procedure and Evidence;

RECALLING that

- (a) The joint trial of the cases of the *Prosecutor v Nyiramasuhuko* and five other Accused (the '*Butare* Cases') started on 12 June 2001 before Judge William H SEKULE, *Presiding*, Judge Winston C Matanzima MAQUTU, and Judge Arlette RAMAROSON;
- (b) Following the elections of the Tribunal's judges at the UN General Assembly on 31 January 2003 for the new mandate beginning on 25 May 2003, Judge Maqutu was not re-elected, with his term of office due to expire on 24 May 2003;
- (c) On 26 March 2003, President Navanethem PILLAY (as she then was) wrote to the UN Secretary-General for purposes of requesting the Security Council to, among other things, extend Judge Maqutu's term at the Tribunal in order to enable him finish the trial of the *Butare* Cases, the *Kamuhanda* Case and the *Kajelijeli* Case, all of which are part-heard trials on the panel of which Judge Maqutu sat;
- (d) In the meantime, in an urgent communication dated 1 May 2003, President Pillay caused the Defence Counsel in the *Butare* Cases to be asked whether they would give their consent to the possible assignment of a new judge to replace Judge Maqutu, under the old Rule 15bis(C), for purposes of continuing the trial of the *Butare* Cases;
- (e) In their responses to President Pillay's communication of 1 May 2003, none of the Accused gave the consent in question;
- (f) On 19 May 2003, the Security Council passed resolution 1482, extending Judge Maqutu's term for purposes of finishing only the *Kamuhanda* and the *Kajelijeli* trials—and not the *Butare* trial;
- (g) In his capacity as the Presiding Judge in the *Butare* Cases, Judge Sekule formally reported to President Pillay on 21 May 2003 that as of 24 May 2003 Judge Maqutu would be unable to sit in the *Butare* Cases as his mandate for that case would expire on that date;
- (h) On 26 May 2003, Judge Erik MØSE was elected the new President of the Tribunal, following the expiry of the tenure of Judge Pillay as President;

- (i) On 27 May 2003, Rule 15bis was amended, empowering the remaining judges of a Trial Chamber, under the new Rule 15bis(D), to decide to continue a part-heard trial with a substitute judge if, taking all the circumstances into account, they determined unanimously that it served the interest of justice so to continue;
- (j) On 28 May 2003, President Møse authorised the Trial Chamber to conduct routine matters of the Chamber, in conformity with Rule 15bis(F);
- (k) Also on 28 May 2003, acting in his capacity as the Presiding Judge in the *Butare* Cases, Judge Sekule caused the Parties in the case to be informed that the resumption of the proceedings for the session of 9 June 2003 to 10 July 2003 will not take place as earlier scheduled and, therefore, Counsel should not come to Arusha and witnesses not be brought; and that the Parties would be informed in due course of any further scheduling;
- (l) On 6 June 2003, President Møse wrote enquiring whether the Parties would be willing to reconsider their position and consent to a continuation of the trial with a judge replacing Judge Maqutu, in view of the fact that the Security Council had actually, finally declined to extend Judge Maqutu's mandate for purposes of finishing the trial of the *Butare* Cases. And on 10 June 2003, President Møse supplemented his communication of 6 June 2003 by requiring the Parties to communicate their position by 16 June 2003;
- (m) In response to President Møse's communication of 6 June 2003 (as amended on 10 June 2003), one Defence Counsel and the Prosecution indicated their consent to continue the trial with a substitute judge, one Defence Counsel did not consent, while the other Defence Counsel stated that the question posed to them was so important that they would need to consult extensively with their clients before making a decision;
- (n) On 19 June 2003, President Møse communicated to Counsel an extension of time (to 25 June 2003) within which to indicate their positions, as well as his assurances that the administrators of the UN Detention Facility in Arusha would extend reasonable cooperation to Counsel, to enable Counsel consult with their clients by telephone. According to President Møse, the financial costs of a visit by Defence Counsel to the UNDF to have face-to-face discussions with their clients would be very high, noting that it would appear sufficient that arrangements are made to ensure ample time for consultations between Counsel and client;
- (o) In the meantime, certain Defence Counsel filed motions, with the Prosecution responding to at least one of those motions, engaging the question of the jurisdiction of the Chamber to proceed in the circumstances;

- (p) On 25 June 2003, in view of the motions of the Parties indicated above, Judge Sekule caused the Parties to be informed that pending the decision on which way to go under Rule 15*bis*, other proceedings in the case are at a standstill; and that the Parties would be informed of any further scheduling in respect of these cases;
- (q) On 26 June 2003, President Møse communicated to Judge Sekule and Judge Ramaroson (the remaining Judges in the trial) that only one of the six Accused gave consent to continue the trial with a substitute judge, while the remaining five Accused were opposed to continuing the trial in that manner;

NOTING that the trial which started on 12 June 2001 is still in the Prosecution phase: 23 witnesses have been called in about 100 days of trial, and the Prosecution has given an estimate that about 60 more witnesses remain to be called in the case for the Prosecution;

CONSIDERING that the extended deadline of 25 June 2003 allowed the Parties to communicate their consent as to whether to continue the trial pursuant to Rule 15*bis*(C), if they chose so to consent, has come and gone, with only one of the six Accused having given consent to continue the trial with a substitute judge while the rest have not given their consent;

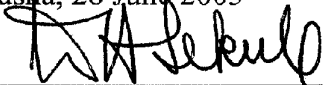
MINDFUL of the need to consider and decide whether or not it is in the interest of justice to continue the trial with a substitute judge under Rule 15*bis*(D);

CONSIDERING that the written submissions of the Parties will assist the remaining Judges in the Chamber in their deliberations on the matter;

HEREBY,

- I. **ORDERS** the Parties to make their submissions accordingly, if any, in writing *on or before 4 July 2003*; and
- II. **DIRECTS** that the Parties who have in the meantime filed motions dealing with the provisions of Rule 15*bis*(D) in a manner relevant to the subject matter of this Scheduling Order may choose only to indicate themselves as adopting the submissions contained in those motions, for purposes of this Scheduling Order.

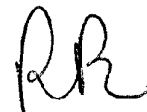
Arusha, 26 June 2003



William H Sekule
Presiding Judge



(Seal of the Tribunal)



Arlette Ramaroson
Judge