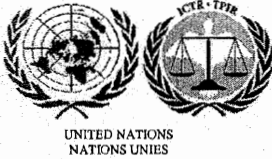


ICTR-99-50-I  
02-10-2003  
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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Or: ENG

**TRIAL CHAMBER II**

**Before:** Judge William H. Sekule, Presiding  
Judge Asoka de Zoysa Gunawardana  
Judge Arlette Ramaroson

**Registrar:** Mr Adama Dieng

**Date:** 2 October 2003

**The PROSECUTOR**  
v.  
**Prosper MUGIRANEZA**  
*Case No. ICTR-99-50-I*

JUDICIAL RECORDS ARCHIVES  
2003 OCT 2 P 12:04  
ICTR

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO DISMISS THE  
INDICTMENT FOR VIOLATION OF ARTICLE 20(4)(C) OF THE STATUTE,  
DEMAND FOR SPEEDY TRIAL AND FOR APPROPRIATE RELIEF**

**Counsels for the Prosecution:**

Paul Ng'arua  
Melinda Pollard  
Elvis Bazawule  
George Mugwanya

**Counsel for the Defence:**

Tom Moran

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

**SITTING** as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Asoka de Zoysa Gunawardana and Judge Arlette Ramaroson (the "Chamber");

**BEING SEIZED** of "Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief", filed on 17 July 2003 (the "Motion");

**NOTING** the "Prosecutor's Response to Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief", filed on 28 July 2003 (the "Prosecutor's Response");

**NOTING** the "Prosper Mugiraneza's Response to the Prosecutor's Reply to Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief", filed on 2 August 2003 (the "Defence' Reply");

#### **SUBMISSIONS OF THE PARTIES**

##### *Submission of the Defence*

1. Prosper Mugiraneza (the "Accused") was arrested in Cameroon on 6 April 1999 pursuant to a request by the Prosecutor. The indictment was confirmed on 13 May 1999. He was transferred to the United Nation Detention Facilities on 31 July 1999.
2. The Defence asserts that the right to a fair trial, as mentioned in Article 20 of the Statute of the Tribunal (the "Statute") and other international human rights instruments, provides an accused person with the right to trial without undue delay. The Defence considers that the 4-year period since the arrest of the accused constitutes undue delay as a matter of law. It considers further that there is no excuse for a delay of this length while a presumptively innocent man is confined in pre-trial detention.
3. The Defence also suggests that it is the responsibility of the Prosecutor to bring a defendant to trial. According to the Defence, the Prosecutor has the duty to show why the delay is not undue for purposes of the Statute and international law and why Mugiraneza has not been prejudiced by the delay.
4. The Defence submits that it has called for a speedy trial on several occasions and requests that, for the above-mentioned reasons, the Trial Chamber should order the indictment against Mugiraneza dismissed with prejudice and that he be released from custody.

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*Response of the Prosecutor*

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5. The Prosecutor maintains that the responsibility for any delay cannot be attributed to his office. Rather the problem is endemic to all organs of the Tribunal and does not concern a single accused. Moreover, the Prosecutor considers that the Defence is also responsible for any delay with the commencement of the trial. The burden for establishing "entitlement" to the relief sought is upon the Defence, as the moving party, and cannot be shifted to the Prosecution.

6. The Prosecutor asserts that the prevailing jurisprudence provides that "undue delay" or reasonableness in bringing a matter to trial does not depend solely upon the counting of days or specific period of time. According to the Prosecutor, Defence has failed to show that the pre-trial detention period constitutes "undue delay" under the circumstances, for which dismissal of the indictment is warranted. Having failed to establish the requisite "undue delay", the question of whether prejudice has resulted from the pre-trial detention is rendered moot.

7. The Prosecutor submits that the Defence Motion should be dismissed in its entirety.

*Reply of the Defence*

8. The Defence considers that, as the "designated litigator for the United Nations", the Prosecutor has the duty of explaining delays in bringing an accused to trial. The Defence maintains that at some point in time delay is presumptively undue and that the Prosecutor has the burden of persuasion that the delay is not undue.

9. The Defence also asserts that the Accused has an independent right to a trial without undue delay and that undue delay standing alone is sufficient to induce dismissal of the indictment. According to the Defence, the right of an accused to a trial without "undue delay" can be violated simply by passage of time without having to demonstrate prejudice independently.

**DELIBERATIONS**

10. The relevant provisions of the Statute provide:

Article 19

The Trial Chamber shall ensure that a trial is fair and expeditious, and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the right of the accused and due regard for the protection of victims and witnesses.

Article 20 (4) (c)

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

[...]

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(c) To be tried without undue delay

11. The Defence has based its Motion on Article 20(4)(c) of the Statute. In terms of the Statute the Chamber is enjoined to try the Accused without undue delay. But any inquiry into an alleged breach of this right will necessarily involve the consideration of a number of factors, including the fundamental purpose of the Tribunal, which is "prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994". This entails balancing the rights of the accused with other important considerations of interest all of which serve the ends of justice.<sup>1</sup>

12. The Trial Chamber recalls its position stated previously in the case of *Mugenzi* that the Accused's right to be tried without undue delay should be balanced with the need to ascertain the truth about the serious crimes with which the Accused is charged.<sup>2</sup> Having regard to the jurisprudence from national or regional jurisdictions the Chamber recalls its Decision in the case of *Kanyabashi*<sup>3</sup> where it said:

The Chamber notes that the issue of reasonable length of proceeding has been addressed by the U.N. Human Rights Committee, the European Court of Human Rights and the Inter-American Commission on Human Rights. "The reasonableness of the period cannot be translated into a fixed number of days, months or years, since it is dependent on other elements which the judge must consider".<sup>4</sup> In the opinion of the European Court of Human Rights, "the reasonableness of the length of proceedings coming within the scope of Article 6(1) must be assessed in each case according to the particular circumstances. The Court has to have regard, *inter alia*, to the complexity of the factual or legal issues raised by the case, to the conduct of the applicants and the competent authorities and to what was at stake for the former, in addition to complying with the "reasonable time" requirement. [four factors]".<sup>5</sup>

13. The Chamber consequently finds that undue delay depends on the circumstances. In this case, for the above mentioned reasons, the Trial Chamber considers that the time between the arrest of the Accused and the imminent commencement of his trial<sup>6</sup> is not to be assessed as being undue.

<sup>1</sup> *Prosecutor v. Justin Mugenzi et al.*, Case No. ICTR-99-50-I, Decision on Justin Mugenzi's Motion for Stay of Proceedings or in the Alternative Provisional Release (Rule 65) and in Addition Severance (Rule 82(B)), TC, 8 November 2002, para 32.

<sup>2</sup> *Ibid.* para 33.

<sup>3</sup> *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings, TC, 23 May 2000.

<sup>4</sup> *Firmenich v. Argentina*, the Inter-American Commission on Human Rights Resolution No. 17/89, (13 April 1989).

<sup>5</sup> *Zimmerman and Steiner*, 13 July 1983, Series A, No. 66, at para. 24.

<sup>6</sup> See para 16.

14. Having held in the circumstances of this case that there is no undue delay, the Trial Chamber considers that there is no need to inquire into any role the Prosecutor might have played about the alleged undue delay.

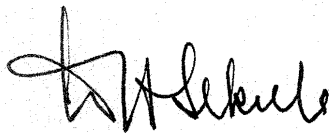
15. Therefore, the Trial Chamber does not find any reason to dismiss the indictment against the Accused, considering that there has been no violation of Article 20(4)(c) and considering the gravity of the offences alleged in the Indictment. s

16. Furthermore, the parties have been informed that the trial of the Accused is scheduled to start during the last quarter of 2003. This coincides with the alternative relief sought by the Defence in this motion. Thus, the remedy sought by the Defence has already been achieved through the normal processes of the Tribunal.

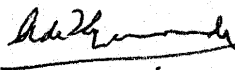
**THE TRIAL CHAMBER HEREBY**

**DISMISSES** the Defence Motion in all respects;

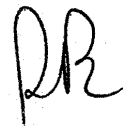
Arusha, 2 October 2003



William H. Sekule  
Presiding Judge



Asoka de Zoysa Gunawardana  
Judge



Arlette Ramaroson  
Judge

