

ICTR-2000-55-I
11-12-2003
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Q.C., Presiding
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Adama Dieng

Date: 11 December 2003

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THE PROSECUTOR

v.

Tharcisse MUVUNYI

Idelphonse NIZEYIMANA, and

Idelphonse HATEGEKIMANA

Case No. ICTR-2000-55-I

**DECISION REGARDING THE PROSECUTOR'S MOTION
FOR LEAVE TO SEVER AN INDICTMENT AND
FOR DIRECTIONS ON THE TRIAL OF THARCISSE MUVUNYI**

Rules 54 and 82 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Silvana Arbia
Jonathan Moses
Adelaide West
Adesola Adeboyejo
Manuel Bouwknecht
Astou M'Bow

Defence for Tharcisse Muvunyi:

Francis Musei, Duty Counsel

Defence for Idelphonse Hategekimana:

Bharat Chadha, Duty Counsel

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III, composed of Judges Lloyd G. Williams, Q.C., Presiding, Andréia Vaz, and Khalida Rachid Khan (“Chamber”);

BEING SEISED of the “*Prosecutor’s Motion for Leave to Sever an Indictment and for Directions on the Trial of Tharcisse Muvunyi*”, filed on 5 November 2003 (“Motion”);

NOTING that the Accused did not file a response to the Motion within the timeframe stipulated in Rule 73(E) of the Rules of Procedure of Evidence (“Rules”) and that the Accused did not either request that these timeframes be extended;

CONSIDERING the Statute of the Tribunal (“Statute”) and the Rules;

NOW REVIEWS the Motion on the sole basis of the written brief filed by the Prosecutor, in accordance with Rule 73(A) of the Rules.

Submissions of the Parties

Prosecution

1. On the one hand, the Prosecutor requests the Chamber to order the severance of Tharcisse Muvunyi’s trial, on the basis of Rules 54 and 82(B) of the Rules. In this regard, the Prosecutor recalls the relevant procedure while emphasising that Tharcisse Muvunyi has been arrested on 7 February 2000, whereas one of his co-Accused, Idelphonse Hategekimana, was arrested recently, on 16 February 2003, and whereas the other Accused, Idelphonse Nizeyimana, remains at large. The Prosecutor also recalls that, since 6 June 2002 at the status conference, he has stated his readiness for the commencement of Tharcisse Muvunyi’s trial.

2. The Prosecutor contends that, pursuant to Rule 82(B), the Chamber can order such severance in order to avoid a conflict of interests that might cause serious prejudice to the Accused. According to the Prosecutor, a joint trial in respect of the three Accused entails the simultaneous presentation of evidence which will necessarily cause prejudice to the Accused Muvunyi, given that his case is ready for trial. In support of this claim, the Prosecutor also refers to jurisprudence from both International Criminal Tribunals where, in situations similar to the present one, Chambers have dismissed motions for joinder of trial, or granted motions for severance of trial.¹

¹ The Prosecutor cites to the following jurisprudence:

(a) ICTY, *Prosecutor v. Kovacevic et al.* (Case No. IT-97-24), *Decision on Motion for Joinder of Accused and Concurrent Presentation of Evidence* (TC), 14 May 1998.

(b) ICTY, *Prosecutor v. Brdjanin and Talic* (Case No. IT-99-36), *Decision on Motions by Momir Talic for a Separate Trial and for Leave to File a Reply* (TC), 9 March 2000.

(c) ICTR, *Prosecutor v. Bizimana et al.* (Case No. ICTR-98-44-T), *Decision on the Defence Motion in Opposition to Joinder and Motion for Severance and Separate Trial Filed by the Accused Juvénal Kajelijeli* (TC), 6 July 2000.

(d) ICTR, *Prosecutor v. Kamuhanda* (Case No. ICTR-99-54-T), *Decision on the Defence Motion for Severance and Separate Trial filed by the Accused* (TC), 7 November 2000.

3. The Prosecutor argues that, in accordance with Rule 54 of the Rules, the Chamber can issue all such orders as it deems necessary for the conduct of trial. According to the Prosecutor, granting severance of the trial in the present case is within the Chamber's competence pursuant to that Rule.

4. Lastly, the Prosecutor alleges that severance of the trial is in the interests of justice and, in the interests of the Accused since it will allow him to be tried without undue delay, thus safeguarding his right to a fair trial.

5. On the other hand, the Prosecutor requests the Chamber to issue directions for trial and set a date for the commencement of trial. The Prosecutor relies in this regard on his general impression that the Defence is not ready for the trial to commence, notably because of the lack of communication between Lead Counsel and the Accused, and considering the latter's request for withdrawal and replacement of Lead Counsel.

Deliberations

6. Rule 82(B) of the Rules states:

(B) The Trial Chamber may order that persons accused jointly under Rule 48 be tried separately if it considers it necessary in order to avoid a conflict of interests that might cause serious prejudice to an accused, or to protect the interests of justice.

7. The Chamber is of the view that the severance of the Accused Tharcisse Muvunyi from the other two Accused would be in the interests of justice. He was arrested on 7 February 2000, and one of his co-Accused has not yet been apprehended. Further the Accused himself requested severance when he made his initial appearance on 8 November 2000.² The right to be tried without undue delay and the readiness of the Prosecutor for trial favour severance and a separate trial for Tharcisse Muvunyi. The Prosecutor's motion for severance shall therefore be granted. Consequently, the Prosecutor is ordered to file a separate indictment containing appropriate charges against Tharcisse Muvunyi within 14 days of the date of this decision.

8. The request for directions as to a date for trial will be dealt with in due course. The question in relation to the Accused's request for withdrawal of Lead Counsel has already been settled by the Decision of the Trial Chamber dated 18 November 2003, and is therefore moot.

(e) ICTR, *Prosecutor v. Bizimana et al.* (Case No. ICTR-98-44-I), *Decision on the Prosecutor's Motion for Severance of Félicien Kabuga's Trial and for Leave to Amend the Accused's Indictment* (TC), 1 September 2003.

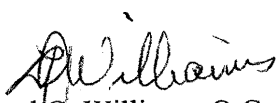
² See. Transcript of 8 November 2000 at 11:00, p. 70.

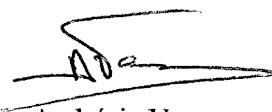
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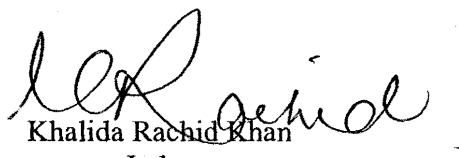
THE CHAMBER,

- I. GRANTS** the Prosecutor's motion for severance of Tharcisse Muvunyi;
- II. ORDERS** the Prosecutor to file, within 14 days, a separate indictment against Tharcisse Muvunyi;
- III. DIRECTS** the Registrar to take all necessary steps to appoint Lead Counsel to Tharcisse Muvunyi in an effort to avoid undue delay for the start of the trial, as well as take all other necessary measures to afford commencement of the trial;
- IV. DENIES** the Prosecutor's motion in all other respects.

Arusha, 11 December 2003


 Lloyd G. Williams, Q.C.
 Presiding Judge


 Andréia Vaz
 Judge


 Khalida Rachid Khan
 Judge

