



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 13 January 2004

The PROSECUTOR

v.

Athanase SEROMBA

Case No. ICTR-2001-66-I

**DECISION ON THE DEFENCE MOTIONS TO ANNUL OR WITHDRAW THE
INDICTMENT**

The Office of the Prosecutor

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

The Defence

Alfred Pognon

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Judge Erik Møse, designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence of the Tribunal (“the Rules”);

BEING SEIZED of the Defense “Requête à fin d’annulation ou de retrait d’acte d’accusation”, filed on 6 May 2003; and its “Requête complémentaire à fin d’annulation ou de retrait d’acte d’accusation”, filed on 7 May 2003;

CONSIDERING the Prosecutor’s “Response to Seromba’s Motions to Annul or Withdraw the Indictment”, filed on 8 May 2003;

HEREBY DECIDES the motion upon the parties’ briefs.

INTRODUCTION

1. The Indictment against the Accused Athanase Seromba was confirmed on 4 July 2001. After his surrender, the Accused was transferred to the United Nations Detention Facility in Arusha on 6 February 2002, and made his initial appearance on 8 February 2002. The Prosecution addressed a request for an interview to the Accused on 12 February 2002, and then repeated the request to his Lead Counsel (who had been appointed on 5 March 2003) on 17 April 2003.

SUBMISSIONS

2. According to the Defence, the Prosecution’s failure to question the accused prior to his indictment is a procedural irregularity rendering the indictment null and void. This obligation is said to arise from the Prosecution’s authority to question suspects under Article 17 of the Statute of the International Tribunal for Rwanda, viewed in conjunction with the rules governing the questioning of suspects set forth in Rules 42 and 43. These and other rules enunciate an adversarial principle governing each and every phase of the of Tribunal’s criminal procedure, including the collection of evidence for use in support of an indictment, which requires the Prosecution to interview the Accused before an indictment is confirmed. The Prosecution’s requests to interview the Accused after his indictment and transfer to Arusha do not satisfy that obligation. The remedy requested is that the indictment be declared void or ordered withdrawn.

3. The Prosecution disputes that there is any obligation to interview a suspect before they are indicted. Whether to interview a suspect is a matter of discretion, not obligation. Rule 63 permits the Prosecution to interview an Accused after they are indicted and the requests to do so were not procedurally improper. Further, the Prosecution argues that the Defence motion is an attempt to re-litigate the decision to confirm the indictment, which is inadmissible. The Prosecution considers the Defence motion to be frivolous and invites the Chamber to impose sanctions, including denying fees to the Defence.

DELIBERATIONS

4. This motion raises two questions: first, whether the Prosecution is required to interview a suspect at the pre-indictment stage; and second, the effect of such a failure, if any, on an indictment which has already been confirmed.

5. Neither the Statute nor the Rules requires the Prosecution to interview a suspect prior to indictment. Article 17 states that the Prosecution “shall have the power” to investigate in a variety of ways, including the power to question suspects. Rules 42 and 43 set forth the rights of suspects, if the power to interview is exercised. Nothing in Article 17, or Rules 42 or 43, suggests that the plain meaning of “power” is qualified by any mandatory obligation. Nor does Article 18 or Rule 47 require that any particular type of evidence be submitted to a reviewing judge to establish a prima facie case for confirmation of an indictment, or otherwise indicate that the pre-indictment investigation must be adversarial.

6. It is thus unnecessary to decide whether such a procedural irregularity would constitute grounds for reviewing an indictment which has already been confirmed. It is worth recalling, however, that Rule 72 offers precise guidance as to the bases on which a confirmed indictment may be challenged. Challenges on other grounds, though not expressly excluded, are generally inadmissible. As this Chamber has observed,

...neither Rule 47 nor Rules 72 and 73 of the Rules permit appeals against a decision rendered by a single Judge to confirm an indictment. Only in special circumstances can a preliminary motion raising objections to the form of the confirmation of an indictment be applied as an indirect means to obtain a review by a Trial Chamber of a confirming decision.

7. The Chamber declines to impose sanctions under Rule 73(E).

FOR THE ABOVE REASONS, THE CHAMBER

DENIES THE MOTION.

Arusha, 13 January 2004

Erik Møse
Judge

[Seal of the Tribunal]