



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
24-2-2004
(9728 - 9725)

9728
#m

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH

Original: FRENCH

Before: Judge Andréia Vaz, Presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registry: Adama Dieng

Date: 5 February 2004

THE PROSECUTOR

v.

ANDRÉ RWAMAKUBA and others

2004 FEB 24 P 5:36
#m

**DECISION ON ANDRÉ RWAMAKUBA'S REQUEST FOR CERTIFICATION
TO APPEAL RULING OF 5 DECEMBER 2003 LIMITING
CROSS-EXAMINATION**

Rules 73(B), 85(B) and 90(F) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
Ifeoma Ojemeni
Dior Fall
Simone Monasebian
Holo Makwaia
Tamara Cummings-John
Ayo Fadugba
Sunkarie Ballah-Conteh

Defence Counsel:

David Hooper and Andreas O'Shea

Defence Counsel for the co-Accused:

Peter Robinson
Dior Diagne
Charles Roach and Frédéric Weyl

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

SITTING as Trial Chamber III (“the Chamber”), composed of Judge Andréia Vaz, presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey,

SEIZED of the Request by the Defence of André Rwamakuba for certification to appeal pursuant to Rule 73(B) of the Rules of Procedure and Evidence, filed on 15 December 2003 (respectively, “the Request” and “the Rules”),

CONSIDERING the Prosecutor’s Response to the said Request, filed on 19 December 2003, and the Reply by the Defence of André Rwamakuba to the Prosecutor’s Response, filed on 19 January 2004,

CONSIDERING the Statute and the Rules,

RULES on the basis of the brief of the Defence, pursuant to Rule 73(A) of the Rules.

Submissions of the Parties

The Defence

1. The Defence alleges that the Chamber’s decision affects the fair and expeditious conduct of the proceedings.
2. The Defence submits that the decision affects the effectiveness of cross-examination, in so far as the Defence did not have adequate time to conduct it properly. According to the Defence, the decision is not in keeping with the equality of arms principle, in that, by nature, cross-examination requires more time. The Defence considers the decision arbitrary in so far as the Chamber does not take into account whether the questions asked by the Defence during cross-examination are relevant.
3. Moreover, the Defence submits, the decision affects the outcome of the trial.
4. According to the Defence, the decision affects both the quantity and the quality of the information put before the Chamber. It submits that the decision puts excessive limits on testing the credibility of a witness. The Defence submits that the decision may therefore prejudice the Accused.
5. According to the Defence, the time limit set in Rule 73(C) of the Rules for filing a request for certification to file an appeal is immaterial having regard to the interests of justice, which, in this instance, warrant an extension of time.

The Prosecutor

6. The Prosecutor emphasizes that the Defence failed to file its Request on time: the oral decision was rendered on 5 December 2003, and the time limit for filing the motion, pursuant to Rule 73(C), expired on 12 December 2003.

7. The Prosecutor submits that the decision does not affect the fair and expeditious conduct of the proceedings. He observes that the decision has the effect of expediting the proceedings. The Prosecutor also submits that the Defence has failed to show in what manner the Ruling is prejudicial to the Accused.

8. The Prosecutor submits that the Chamber has the power, pursuant to Rule 90(F) of the Rules, to limit cross-examination.

9. The Prosecutor further submits that the Chamber's decision is issuing not a strict order, but merely provided clarifications to guide the cross-examinations.

Deliberations

10. On 5 December 2003, the Chamber, in reference to Rule 90(F)(ii) of the Rules, with the express aim of avoiding "needless consumption of time", decided to limit the time for cross-examination of a witness by the Defence. Indeed, it observed that the decision was valid for both Parties.¹

11. The Chamber finds that the Request was not filed within the prescribed time limits. None of the exceptions set forth in Rule 73(C)(i) or (ii) of the Rules applies, and the Request should thus have been filed within seven days following the impugned decision, that is to say on 12 December 2003 at the latest. Nonetheless, the Chamber may, pursuant to Rule 7ter of the Rules, not take into account the expiration of the time limit. The Chamber further holds that it is in the interests of justice to rule on the merits of the Request.

12. The decision does not affect the fair conduct of the proceedings as set out in Rule 73(B) of the Rules. The Chamber does not discriminate between the Parties, as they are both subject to the same limitations as regards the conduct of cross-examination. The discretionary power the Chamber exercises over the conduct of cross-examination of witnesses allows the Parties all the time needed to conduct their cross-examinations. Nothing in the Chamber's decision prevents the Parties from testing the credibility of witnesses using all evidence that is consistent with the Rules, in particular with the principles of a fair and expeditious trial.

13. The Chamber further finds that the decision does not affect the expeditious conduct of the proceedings as set out in Rule 73(B) of the Rules. On the contrary, it is specifically aimed at expediting the conduct of the proceedings pursuant to Rule 90(F)(ii) of the Rules. Indeed, this provision sets out not only the possibility but the obligation for the Chamber to ensure expeditious proceedings. Indeed, the Chamber imposed the limits set out in Rule 90(F) of the Rules only after many repetitions and irrelevant questions.

14. The Chamber stresses *ad abundantiam* that the requirement for fair and expeditious proceedings justifies limiting the Parties' communications. That is precisely why the "Practice Direction on the Length of Briefs and Motions" of the

¹ Transcript of hearing of 5 December 2003, page 4, line 29.

9725

International Criminal Tribunal for the Former Yugoslavia (ICTY)² was issued, and has been applied by ICTY without causing prejudice to the parties.

15. The Chamber finds that the decision in no way affects the outcome of the trial. It should be noted above all that that by the decision of 5 December 2003, the Chamber simply gave a "time frame"³ and guidelines. During cross-examination of another witness by Counsel of another Accused, the Chamber clarified its Decision by stating that it was not "an arithmetic equality"⁴ and that it would decide on a case-by-case basis, or based on the analysis of the particular situation. Should it become necessary to limit the length of cross-examination, the Chamber will, nonetheless, be able to allow more time to a party needing it, provided this does not lead to needless consumption of time.

FOR THESE REASONS

THE TRIBUNAL

DENIES the Request for Certification to Appeal Ruling Concerning Limiting Cross-examination, of 5 December 2003.

Arusha, 5 February 2004

[Signed]

Judge Andréia Vaz
Presiding

[Signed]

Judge Flavia Lattanzi

[Signed]

Judge Florence Rita Arrey

[Seal of the Tribunal]



² Issued by the President of ICTY on 19 January 2001 (IT/184).

³ Transcript of hearing of 5 December 2003, page 8, line 19.

⁴ Transcript of hearing of 11 December 2003, page 48, line 29.