



UNITED NATIONS
NATIONS UNIES

ICR 98-44-T
19-02-2004
(9497-9494)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 19 February 2004

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
André RWAMAKUBA

Case No. ICTR--98-44-T

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DECISION ON THE DEFENCE MOTION FOR DECLARATION OF A MISTRIAL

Article 20 of the Statute, Rule 73 of the Rules of Procedure and Evidence

Defence Counsel:
Charles Roach and Frédéric Weyl
Peter Robinson

Defence Counsel of the Co-Accused:
Dior Diagne
David Hooper and Andreas O'Shea

Office of the Prosecutor:
Don Webster
Ifeoma Ojemeni
Dior Fall
Simone Monasebian
Holo Makwaia
Tamara Cummings-John
Ayo Fadugba
Sunkarie Ballah-Conteh

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

SITTING as Trial Chamber III, composed of Judges Andréia Vaz, Presiding, Flavia Lattanzi and Florence Rita Arrey (“Chamber”);

BEING SEIZED of the Oral Motion for Declaration of a Mistrial, submitted by the Defence for Mathieu Ngirumpatse and Joseph Nzirorera on 19 January 2004 (“Motion”);

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

NOW DECIDES on the basis of the Parties’ arguments.

I. Parties’ submissions

Defence

1. The Defence for Ngirumpatse demands the declaration of a mistrial. It claims that the Accused has been prejudiced by the taking of testimony from witnesses heard during the first session whose testimony does not refer to the indictment that will ultimately be the basis of the trial.
2. The Defence for Ngirumpatse further argues that the judges’ impartiality with regard to their pending Decision on the Prosecutor’s motion to amend the indictment has been compromised by the hearing of witnesses before the establishment of a final indictment.
3. The Defence for Ngirumpatse submits that the vacation of the Chamber’s Decision of 8 October 2003¹ by the Appeals Chamber’s Decision of 19 December 2003² has increased the uncertainty regarding the charges against the Accused to a degree that calls for the declaration of a mistrial.
4. The Defence for Nzirorera joins the motion. In support of its request, the Defence for Nzirorera points out that their cross-examination of first session witnesses was hampered by the fact that the final version of the indictment was at the time unknown to them.

Prosecution

5. The Prosecution requests that the Chamber rejects the motion. It submits that throughout the trial, there was always a valid indictment, and hence a basis for the hearing of witnesses.

¹ Decision on the Prosecutor’s Motion for Separate Trials and For Leave to File an Amended Indictment

² Decision on Prosecutor’s Interlocutory Appeal against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment.

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II. Deliberations

6. Given the fact that Rule 73 does not limit the scope of motions, the present request for declaration of a mistrial is admissible. The Chamber notes, though, that while the declaration of a mistrial is a concept well entrenched in certain national jurisprudences it is not embedded in international criminal law. The Chamber considers that the Motion falls under a request to commence the trial *de novo*, based upon the amendment of the indictment sought by the Prosecution.
7. The Chamber recalls that, according to the Rules, the Prosecution may amend an indictment during trial subject to leave from the Chamber. Rule 50 B) and C) regulates the legal consequences that arise in case an amended indictment that includes new charges has been granted. None of the Rules explicitly states or tacitly implies the necessity to start a trial *de novo* in this case. Conversely, under these circumstances the fairness of the trial is guaranteed by the additional time the Defence is granted to prepare its case.³
8. The Chamber notes that the Defence submitted its request for recommencement of the trial at a point in time when the proposed amendment had not even been authorised by the Chamber and the indictment as of 21 November 2001, such as modified by the Chamber's decision of 8 October 2003 was still in force. Throughout the trial, there was always a valid indictment, and hence a legitimate basis for the hearing of witnesses. At no point during the proceedings was there a reasonable doubt about which indictment was currently in force. Hence, the Defence knew all along which charges it was facing on the basis of the applicable indictment. In that regard, the Defence was unhampered in preparing its case and none of the substantial rights of the Accused was denied.
9. The Chamber observes that the first session witnesses' testimony was covered by the then-valid indictment. The admitted testimony did not extend to any factual allegations beyond its scope. This actual limitation contradicts the Defence's allegation of prejudice to the Accused. In this regard, the Chamber is not satisfied that the Accused suffered any material disadvantage.
10. The Defence has not demonstrated that it was impeded from asking pertinent questions during cross-examination of witnesses who were heard during the first session. Moreover, a perceived lack of opportunity to ask certain questions does not necessarily amount to a denial of due process, but could rather constitute a reason for requesting the recall of witnesses.
11. The Chamber notes that its impartiality regarding the decision on the Prosecutor's motion to amend the indictment has not been compromised by hearing the testimony of witnesses during the first session. The Chamber is able to evaluate the allegations presented to it on the basis of the applicable law. Procedural issues that arose previously within the same trial do not compromise its impartial decision on any motion it is subsequently seized with.

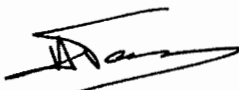
³ Cf. *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment on Appeal, 1 June 2001, par. 110 - 123.


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12. In conclusion, the Chamber is satisfied that at no stage during the trial did the Accused suffer any prejudice amounting to the denial of due process.

**FOR THE ABOVE REASONS,
THE CHAMBER
DISMISSES THE MOTION.**

Arusha, 19 February 2004


Andrézia Vaz
Presiding Judge


Flavia Lattanzi
Judge


Florence Rita Arrey
Judge

