

ICTR-01-76-1
08-03-2004
(1308 - 1306)



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1308

S. MUSA

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 5 March 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

2004 MAR -8 A 10:30
S. MUSA

DECISION ON DEFENCE MOTION FOR NEW INITIAL APPEARANCE

Office of the Prosecutor:

William T. Egbe
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Amina Ibrahim

Counsel for the Defence

Sadikou Ayo Alao
Beth Lyons

blm

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

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SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Requête de la défense aux fins d’obtenir une nouvelle comparution de l’accusé suite à la décision du 26/01/04 relative à la modification de l’acte d’accusation initial articles 50, 72 et 73 a du RPP”, filed on 12 February 2004;

CONSIDERING the “Prosecutor’s Response to Defence Motion”, filed on 18 February 2004; and the “Réplique de la défense”, filed on 29 February 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. By a decision dated 26 January 2004, the Chamber granted the Prosecution’s motion to amend the Indictment, citing as its reasons the nature of the amendments, which did not contain new charges but were intended to clarify the case against the Defence. The amended Indictment was subsequently filed on 16 February 2004.

SUBMISSIONS

2. The Defence requests a new initial appearance for the Accused to plead to the amended Indictment as it contains new charges, in that it alleges a joint criminal enterprise, and names a new victim in the charge of murder against the Accused.

3. The Prosecution objects to the motion, arguing that the Defence are trying to obtain an appeal of the decision from the same Chamber and out of time.

4. The Defence argues in its Reply that it was not seeking an appeal on the decision to amend the Indictment but on the contrary was requesting an initial appearance based on the amended Indictment. The Defence notes that the decision does not preclude the operation of Rule 50(B).

DELIBERATIONS

5. Rule 50(B) provides for a further appearance by the Accused where an Amended Indictment contains new charges. The Amended Indictment does not contain new charges but makes new allegations of the Accused’s involvement in a joint criminal enterprise and the killing of a Tutsi gendarme named Ndagijimana.

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6. In *Prosecutor v. Kajelijeli*, the Trial Chamber, citing *Prosecutor v. Krnojelac*, noted that entirely new factual situations in support of existing counts may nevertheless amount effectively to new charges.¹

7. While the allegations of a joint criminal enterprise and a killing in support of the existing charge of murder are not new charges, they represent significant and material facts that alter the Prosecution's case, which the Defence is to answer. In addition, the Chamber notes that pursuant to Article 19(3), it is the Chamber's responsibility to confirm that the Accused understands the Indictment and to instruct the Accused to enter a plea. Article 20(4)(a) ensures that the Accused will be informed of "the nature and cause of the charge against him". Accordingly, it would be in the interests of a fair trial for the Accused that he be allowed to plead to the new allegations in a further appearance. Moreover, the Chamber considers that no prejudice is caused to the Prosecution in ordering a further appearance of the Accused.

FOR THE ABOVE REASONS, THE CHAMBER

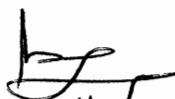
GRANTS the motion;

INSTRUCTS the Registry to organize a further appearance as soon as possible, preferably on Wednesday 10 March 2004.

Arusha, 5 March 2004



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge



[Seal of the Tribunal]

¹ *Krnojelac*, Decision on Prosecutor's Response to Decision of 24 February 1999 (TC), 20 May 1999, para. 20; *Kajelijeli*, Decision on Prosecutor's Motion to Correct the Indictment Dated 22 December 2000 and Motion for Leave to File an Amended Indictment (TC), 25 January 2001, paras. 29-31.