



ICTR-98-44-PT
11-4-2005
(18044-18040)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

18044
Majelis

TRIAL CHAMBER III

Case N° ICTR-98-44-T

ENGLISH
Original: FRENCH

Before Judges: Andrésia Vaz, presiding
Flavia Lattanzi
Florence Rita Arrey

Registrar: Adama Dieng

Date: 29 March 2004

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ICTR

THE PROSECUTOR
v.
ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA
ANDRÉ RWAMAKUBA

**DECISION ON MOTIONS BY KAREMERA AND NZIRORERA TO DISMISS
THE INDICTMENT FOR PROCEDURAL AND FORMAL DEFECTS**

Rule 50 of the Rules of Procedure and Evidence

Counsel for the Defence:
Peter Robinson
Dior Diagne and Félix Sow

Counsel for the co-Accused:
Charles Roach and Frédérik Weyl
David Hooper and Andreas O'Shea

Office of the Prosecutor:
Don Webster
Holo Makwaia
Dior Fall
Bongany Dyani
Gregory Lombardi
Sunkarie Ballah-Conte
Ayodeji Fadugba
Tamara Cummings-John

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

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

BEING SEIZED of a motion by the Defence for Nzirorera entitled *Preliminary
Motion to Dismiss Amended Indictment as Void ab initio*, filed on 24 March 2004;

BEING SEIZED also of a motion by the Defence for Karemera entitled “*Requête
aux fins d’invalidation de l’Acte d’accusation examiné par un juge ad litem : Article
72 du Règlement de procédure et de preuve et 12 quater du Statut*”, filed on 24 March
2004;

CONSIDERING the Prosecutor’s response to the motion by Nzirorera filed on
25 March 2004;

CONSIDERING Articles 12 *quater* and 18 of the Statute of the Tribunal (the
“Statute”) and the Rules of Procedure and Evidence of the Tribunal (the “Rules”),
particularly Rules 50(B) and 62 of the Rules;

RULING solely on the basis of the briefs filed by the parties, pursuant to Rules 73
(A) of the Rules;

HEREBY DECIDES the motion

Submissions of the Parties

The Defence

Nzirorera

1. The Defence for Nzirorera requests, pursuant to Rules 72 and 73 of the Rules,
that the amended Indictment be dismissed on the grounds that the *ad litem* Judges
adjudicating in the matter confirmed the Indictment in contravention of Article
12 *quater* 2(b)(ii) of the Statute.

Karemera

2. The Defence for Karemera requests dismissal of the Indictment for the
following reasons:

- (i) The Accused still does not have a French version of the Indictment,
in violation of his rights under Articles 20(2) and 20(4)(a) of the
Statute.

- (ii) The Accused and his Counsel do not have mastery of the English language and are, therefore, unable to comment on the Prosecutor's draft amended Indictment, dated 23 January 2004. Further, the extension of time which was granted the Accused was inoperative, since the decision was rendered one day before the deadline expired. If the decision had been rendered earlier, the Defence would not have been able to respond since the Indictment was not available in French as of 4 February. The amended Indictment is vitiated because the Defence was not afforded the opportunity to respond to the motion that sought its amendment.
- (iii) The initial appearance of 23 February 2004 should be declared null and void, on account of the violation of Rules 50(B), 62 and 82 *bis* of the Rules. Once the Accused has pleaded not guilty to the counts in the Indictment, further appearance should relate to the new counts in the Indictment, pursuant to Rule 50(B) of the Rules. The Accused was called upon to enter a plea on all the counts in the amended Indictment. Further, pursuant to Rule 62(A)(ii), the Indictment shall be read to the Accused, which was not the case here.
- (iv) The participation of the *ad litem* Judges in the review of the Indictment violates Article 12 *quater* of the Statute which does not confer such powers on them. This *ipso facto* renders the Indictment defective in the form.

The Prosecutor

3. The Prosecutor made the following submissions in support of his objection:

- (i) *Ad litem* Judges sitting in a Trial Chamber are empowered to grant leave to amend an Indictment. The Defence is confusing two separate procedures: confirmation and amendment of an Indictment.
- (ii) Article 18 of the Statute and Rule 50(B) of the Rules apply to a confirming Judge and a Trial Chamber respectively, the two situations are different. Where an Indictment has been confirmed and the Accused has made his initial appearance, only a Trial Chamber may grant leave to amend such an Indictment.
- (iii) While the Defence can successfully assert that an *ad litem* judge cannot review an indictment within the framework of Article 18, pursuant to Article 12 *quater* (2)(b)(ii), it would however be erroneous to request the dismissal of an indictment on those grounds, because the Chamber did not confirm the indictment; rather, it granted leave for an amendment, pursuant to Rule 50 of the Rules.

Deliberations

4. The Chamber notes that the Defence refers to Article 18 of the Statute on the confirmation of an indictment, that is, to the power of a judge to confirm an indictment.
5. On 13 February 2004, the Chamber reviewed the proposed amendments to the Indictment pursuant to Rule 50(A) of the Rules, which empowers it to so act; therefore, it is not confirmation of an indictment. The Chamber notes that Article 12 *quater* (2)(b)(ii) expressly refers to Article 18 of the Statute.
6. The Chamber wishes to emphasise that though the *ad litem* Judges do not have the same powers as the permanent Judges during the pre-trial phase, they, however, “enjoy [...] the same powers as the permanent Judges [...]”¹ with regard to judicial functions after the commencement of trial.
7. The Chamber would like to remind the Defence that the *Karamera et al* trial commenced on 27 November 2003.
8. Consequently, the Chamber is of the view that the motions for the dismissal of the Indictment on the ground that it was confirmed by *ad litem* Judges are unfounded.
9. The Chamber will now examine the other submissions made by Karemera’s Defence alleging formal defects in the Indictment, on account of the fact that it was not available in French at the time the Defence response to the motion for leave to amend was expected, and also because of the voidable nature of the further appearance of 23 February 2004.
10. Regarding the extension of the time-limit granted the Defence for the filing of its response, the Chamber considers that it is erroneous to assert that an Indictment has a formal defect because Defence was deprived of the opportunity to respond to the motion for leave to amend it, particularly since it had the opportunity to challenge the amended Indictment through preliminary motions, as it did in the other motions filed before this Chamber on 24 March. The Chamber further considers that the defect in the form referred to by the Defence is not a defect within the meaning of Rule 72(A)(ii) of the Rules.
11. The Chamber is of the opinion that the further initial appearance of 24 February 2004 was conducted in compliance with the Rules. The Accused were called upon to enter a plea on all the counts because the Chamber considered that some of the new facts introduced by the Prosecutor amounted to new charges and because of the introduction of the concept of joint criminal enterprise.²

¹ Article 12 *quater* (1) (b)

² *The Prosecutor v. Edouard Karemera*, Case No. ICTR-98-44-T, Decision granting leave to amend the Indictment, dated 13 February 2004. Para. 40.

12. With regard to the submission that the Indictment was not read in the presence of the Accused, in violation of Rule 62(A)(ii) of the Rules, the Chamber wishes to point out that all measures were taken to enable the Accused to attend the hearing and that he refused to attend. It emerged from the hearing that the Commanding Officer of the Detention Unit served copies of the Indictment, in its French version, on the Accused and that proof of service was obtained therefor. The Chamber therefore cannot adjourn the proceedings on account of deliberate attempts by the Accused to obstruct the trial from proceeding.

FOR THE ABOVE REASONS, THE CHAMBER

I. DISMISSES the motion;

II. ORDERS the Registrar to settle only part of the fees and costs associated with the motions, which it deems to be frivolous, pursuant to Rule 73(F) of the Rules.

Arusha, 29 March 2004

[Signed]

Andrésia Vaz
Presiding Judge

[Signed]

Flavia Lattanzi
Judge

[Signed]

Florence Rita Arrey
Judge

[Seal of the Tribunal]

