



ICTR-98-44-T
14-7-2004
(13753-13750)

13753
2004

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CHAMBER III

Before: Judge Andresia Vaz, presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registry: Adama Dieng

Date: 29 March 2004

2004 JUL 14 P 2:30
[Handwritten signature]

THE PROSECUTOR
v.
EDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA
ANDRE RWAMAKUBA

Case No. ICTR-98-44-T

**DECISION ON THE MOTION TO CONTINUE TRIAL FILED BY THE
DEFENCE FOR JOSEPH NZIRORERA
Rule 73 of the Rules of Procedure and Evidence**

Defence Counsel:
Peter Robinson

Counsel for co-Accused:
Dior Diagne and Felix Sow
Charles Roach and Frederic Weyl
David Hooper and Andreas O'Shea

Office of the Prosecutor:
Don Webster
Holo Makwaia
Dior Sow Fall
Gregory Lombardi
Bongani Dyani
Sunkarie Ballah-Conteh
Ayodeji Fadugba

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;

BEING SEIZED of *Motion to continue trial* (the “motion”) filed by the Defence of Joseph Nzirorera on 17 March;

CONSIDERING the Prosecutor’s Response filed on 26 March 2004 (the “Response”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rules 50(C), 66(A)(ii), 72(A) and 73(E);

RULES as follows, on the basis of the written briefs of the parties, pursuant to Rule 73(A).

Submissions by the parties

Submissions by the Defence

1. The Defence requests the Chamber to adjourn *sine die* the trial scheduled to resume on 29 March 2004.
2. It is the Defence’s opinion that preliminary motions must be disposed of no later than 29 March 2004. The Defence thus contends that considering the time limits for filing responses, replies and a possible appeal, the preliminary motions cannot be disposed of in time.
3. The Defence further submits that it needs more time for the preparation of its defence with respect to new charges¹. It will need to establish possible alibis, which could only be done in mid-April at the earliest. Furthermore, the Prosecutor would not have disclosed all the prior statements of witnesses, particularly in relation to the new allegations. The Defence also submits that the time limit provided for in Rule 66(A)(ii) should apply. Therefore, the witnesses whose statements were disclosed belatedly should only appear before the Chamber after sixty days. Lastly, the Defence submits that with the addition of the charge of joint criminal enterprise, more time will be required to

¹ The Defence observes that in its Decision granting leave to file an amended indictment, the Appeals Chamber had explicitly envisaged continuance of trial in order to give the Defence adequate time to prepare its response to the new charges. (*Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment*, 19 December 2003, para. 24).

*The Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and Andre Rwamakuba,
Case No. ICTR-98-44-T*

adequately prepare the cross-examination of the numerous potential witnesses who will be called to testify against the Accused.

Submissions by the Prosecution

4. The Prosecution submits that if it files its responses to the preliminary motions promptly, the Chamber will rule on them in time prior to the resumption of trial. The Prosecution further submits that the Rules do not entitle the moving party to file a reply.

5. The Prosecution submits that it has fulfilled all its disclosure obligations under Rule 66(A), including those relating to the eighteen witnesses that are scheduled to appear during the second trial session.

6. The Prosecutor contends that the Defence had adequate time to prepare its defence since it had been informed, right at the beginning of the Trial, that the Prosecution would rely on the doctrine of joint criminal enterprise.

7. The Prosecutor points out that pursuant to the provisions of Rule 67, it is incumbent on the Defence to notify the Prosecutor of its intent to enter the defence of alibi.

Deliberations

8. Even though Rule 72(A) provides that the Chamber shall dispose of preliminary motions before the commencement of the opening statements, the situation here is different: the Indictment was amended and the so-called preliminary motions filed in the course of the trial. The Chamber is not obliged to rule on the preliminary motions prior to the resumption of the trial. Furthermore, the Chamber recalls that in the case in point, appeals shall not stay the underlying proceedings, as implicitly provided for in Rule 72(B).

9. With regard to the defence of alibi, given that the trial has already commenced, the Defence has to disclose the relevant information as soon as possible, as provided for in Rule 67.

10. As to the alleged failure by the Prosecutor to disclose prior statements, the Defence has not specified which statements may not have been disclosed to it. Since the Prosecutor denies these allegations, the Chamber submission relating thereto is dismissed.

*The Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and Andre Rwamakuba,
Case No. ICTR-98-44-T*

FOR THE FOREGOING REASONS,

THE CHAMBER

DISMISSES the motion.

Arusha, 29 March 2004

[Signed]

Andrésia Vaz
Presiding Judge

[Signed]

Flavia Lattanzi
Judge

[Signed]

Florence Rita Arrey
Judge

[Seal of the Tribunal]
