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ICTR-97-21-T
20-05-2004
(1249 — 1247)



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1249 *ambya*

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 20 May 2004

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO

Case No. ICTR-97-21-T

2004 MAY 20 4:11:50
JUDICIAL

DECISION ON NYIRAMASUHUKO'S MOTION FOR RECONSIDERATION OF THE "DECISION ON DEFENCE MOTION FOR CERTIFICATION TO APPEAL THE 'DECISION ON DEFENCE MOTION FOR A STAY OF PROCEEDINGS AND ABUSE OF PROCESS'"

Office of the Prosecutor

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Defence Counsel

Nicole Bergevin
Guy Poupart

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

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”);

RECALLING the “Decision on Defence Motion for Certification to Appeal the ‘Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’” of 19 March 2004 (the “Impugned Decision”);

BEING SEISED of the “Motion for Reconsideration of the ‘Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’”¹, filed by Nyiramasuhuko on 30 March 2004² (“the Motion”);

CONSIDERING the “Prosecutor’s Response to Nyiramasuhuko’s Motion for Reconsideration of the ‘Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’”, filed by the Prosecutor on 5 April 2004 (“the Response”);

CONSIDERING the “Registry’s Submission under Rule 33 (B) of the Rules on the ‘Requête de Pauline Nyiramasuhuko aux fins de révision de la Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’”, filed by the Registry on 13 April 2004 (“the Registry’s Submission”);

CONSIDERING “Nyiramasuhuko’s Reply to the ‘Registry’s Submission Under Rule 33 (B) of the Rules on the ‘Requête de Pauline Nyiramasuhuko aux fins de révision de la Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’”³, filed by the Defence on 15 April 2004 (“the Reply to the Registry”);

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

WHEREAS the Defence requests a reconsideration of the warning addressed pursuant to Rule 46(A);

WHEREAS the Impugned Decision warned the Defence for having “brought back issues without saying a word to even hint at the fact that they had raised those issues on a previous occasion” and that a decision was rendered on it on 12 October 2000 by Judge Kama, “at a time when interlocutory appeal was forbidden”;⁴

WHEREAS the Trial Chamber warned the Defence against such conduct which constituted an attempt to obstruct the proceedings;

¹ The Motion was filed in French and originally entitled: « *Requête de Pauline Nyiramasuhuko aux fins de révision de la Decision on Defence Motion for Certification to Appeal the Decision on Defence Motion for a Stay of Proceedings and Abuse of Process* ».

² The Motion, which is dated 14 May 2004, was received by fax on 15 May 2004 and then filed with the Central Registry on 17 May 2004.

³ The Reply was filed in French and originally entitled: « *Réponse de Pauline Nyiramasuhuko au ‘Registry’s Submission under Rule 33(B) of the Rules on Requête de Pauline Nyiramasuhuko aux fins de révision de la Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’* ».

⁴ Para. 32 of the Impugned Decision.



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WHEREAS the Defence submits in its Motion that clear reference to the Decision of 12 October 2000 was made in para. 39 to 42 of a "Reply to the Prosecutor Response to the Motion for a stay of proceedings and abuse of process", dated 3 July 2003, which the Defence alleges having sent by fax to the Tribunal on 4 July 2003 ("the alleged Reply");

WHEREAS the Chamber never received this document;

WHEREAS the review of the case records, which was undertaken by the Court Management Section at the request of the Chamber, concluded to the non existence of the alleged Reply;

WHEREAS the Defence submits that the alleged reply was sent from the fax machine of the Counsel's residence, which would explain, according to the Defence, that no evidence of its transmission can be given;

WHEREAS the Defence does not contest that the alleged Reply was not received by the Tribunal but fails to furnish evidence of the transmission;

WHEREAS the Defence has failed to demonstrate the existence of a new fact that may have given ground for reconsideration;

FOR THE ABOVE REASONS,

THE TRIAL CHAMBER

DISMISSES the Motion in its entirety.

Arusha, 20 May 2004



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]