



ICTR-98-41-T
16-06-2004
(20638-20636)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

20638

S. Mutsaers

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 16 June 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

2004 JUN 16 P 4:41
ICTR
OFFICIAL RECORDS

DECISION ON PROSECUTOR'S REQUEST FOR A SUSPENSION OF THE TIME-LIMIT UNDER RULE 73(C) IN RESPECT OF THE TRIAL CHAMBER'S "DECISION ON PROSECUTOR'S MOTION FOR LEAVE TO VARY THE WITNESS LIST PURSUANT TO RULE 73BIS(E)"

Office of the Prosecutor:

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Peter Erlinder
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Gershom Otachi Bw'omanwa

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

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

BEING SEIZED OF the “Prosecutor’s Request for a Suspension of the Time-Limit under Rule 73(C) in Respect of the Trial Chamber’s ‘Decision on Prosecutor’s Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)’, issued on 21 May 2004”, filed on 28 May 2004;

CONSIDERING the Joint Defence Response, filed on 31 May 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 21 May 2004, the Chamber issued its Decision regarding an application by the Prosecution to vary its witness list. The Prosecution was allowed to add Witnesses AAA, ABQ, AFJ and Commander Maxwell Nkole (another witness, Witness AL, had already been added during the trial, before the Decision was rendered). The Chamber denied the motion in respect of Witnesses AJP, AMI, ANC and ANE, citing, *inter alia*, the lateness of the disclosure of the statements of these witnesses to the Defence and the advanced stage of proceedings. The Prosecution case is tentatively scheduled to close on 14 July 2004. On 1 June 2004, the Prosecution filed a motion for reconsideration of the Decision.

SUBMISSIONS

2. The Prosecution seeks a suspension of the seven-day time-limit set out in Rule 73(C) for requests for certification pending a decision on its reconsideration motion. It is submitted that filing this motion and the reconsideration motion, rather than filing a direct certification for appeal, saves judicial time and avoids unnecessary work.

3. The Defence submits that the language of Rule 73(C) does not grant the Chamber any discretion to suspend the time-limit. If the Chamber considers that such discretion exists, the Defence argues that the Prosecution would have missed the deadline for filing the certification request in any event as the deadline was 28 May 2004, and that it would not save judicial time to have to respond to this motion, when the Prosecution could have filed a certification request instead.

DELIBERATIONS

4. Rule 73(B) and (C), which provides for interlocutory appeals, states as follows:

(B) Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the

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proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

(C) Requests for certification shall be filed within seven days of the filing of the impugned decision. Where such decision is rendered orally, this time-limit shall run from the date of the oral decision, unless

(i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or

(ii) the Trial Chamber has indicated that a written decision will follow, in which case, the time-limit shall run from filing of the written decision.

If certification is given, a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify.

5. The Rule mandates the seven-day time-limit (“shall be filed within seven days”) for such requests and does not provide for a suspension of the time-limit. The mirror provision in Rule 72, which deals with interlocutory appeals from preliminary motions, on the other hand, provides that failure to comply with the time limits shall constitute a waiver of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing good cause. The different wording in Rules 72 and 73 makes it doubtful whether the Chamber may grant a suspension of the time-limit in Rule 73(C). However, even assuming that the Chamber has an inherent competence to do so, it sees no reason to grant the request in the present case.

6. The Prosecution could have filed the certification request instead of the reconsideration motion, which would have been the appropriate remedy in this case. It is unclear how filing these motions, instead of one certification request, amounts to a saving in judicial time or work for the parties. The legal remedy for the Prosecution was a certification request and the Prosecution was ill-advised in filing the reconsideration motion, for reasons more fully elaborated upon in the decision on that motion, rendered yesterday.

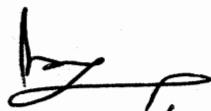
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

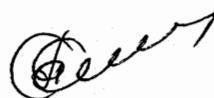
Arusha, 16 June 2004



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

