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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

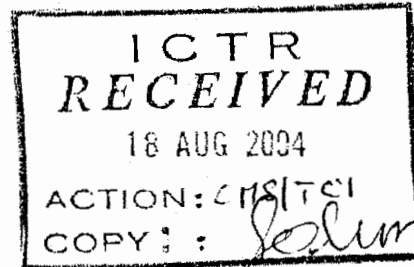
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**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Dennis C. M. Byron

**Registrar:** Adama Dieng

**Date:** 18 August 2004



**THE PROSECUTOR**

v.

**Aloys SIMBA**

*Case No. ICTR-01-76-I*

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**DECISION ON POSTPONEMENT OF TRIAL**

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**Office of the Prosecutor**

Richard. Karegyesa  
Sulaiman Khan  
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Amina Ibrahim

**Counsel for the Defence**

Sadikou Ayo Alao  
Beth Lyons

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

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Dennis C. M. Byron;

**HEREBY DECIDES** as follows.

**INTRODUCTION**

1. The Accused was arrested on 27 November 2001 in Senegal. The Indictment against the Accused was confirmed on 8 January 2002. He was subsequently transferred to the Tribunal’s Detention Facility on 11 March 2002, and made his initial appearance on 18 March 2002.
2. During a Status Conference held on 15 January 2004, Prosecution and Defence Counsel were informed that the trial would commence sometime between 15 May and the end of July 2004. Following the Chamber’s decision on a defence motion alleging defects in the form of the Indictment, the amended Indictment was filed on 27 January 2004. The Accused made a further appearance, as requested by the Defence, on 17 March 2004.
3. Pursuant to a memorandum of 5 March 2004 from the President of the Tribunal, the trial was scheduled to commence on 10 May 2004. On 19 April 2004, the Defence moved for a postponement of the commencement of the trial due to untimely service of disclosure documents to the Defence. By a decision of 28 April 2004, the Chamber granted the motion and deferred commencement to 13 May 2004. On 16 April 2004, the Defence filed another motion alleging defects in the form of the Indictment, which was granted in part on 6 May 2004. The second amended Indictment was subsequently filed on 10 May 2004 in English and French.
4. On 11 May 2004, the Defence sent an urgent letter to the Chamber seeking a further postponement of the trial, on the basis that the Defence wished to appeal the decision of 6 May 2004. By memorandum of 11 May 2004, the President informed the parties that the issues raised by the Defence did not change the scheduling of the trial which would commence on 13 May 2004 as previously notified. It would be for the Chamber, as composed at trial, to decide on the issues raised in the letter.
5. A Pre-trial Conference was held on 13 May 2004. The Chamber was then composed of Judges Jai Ram Reddy, Sergei Alekseevich Egorov and Emile Short. During the Conference, the Defence again sought a postponement of the trial, on the following grounds: i) the trial had to be stayed since the Defence intended to appeal two decisions rendered by the Chamber, and interlocutory appeals had the effect of staying trial proceedings; ii) all documents in English had to be translated into French, the language of Lead Counsel, before the trial could commence; iii) the Prosecution had not disclosed the criminal records of its witnesses and their cooperation agreements with Rwanda; iv) the Prosecution had not fulfilled its disclosure obligations; and v) the Prosecution should interview the Accused.
6. In an oral decision rendered the same day, the request for postponement was denied for the following respective reasons: i) the Defence had not actually filed any appeals as yet and

interlocutory appeals did not necessitate a stay of proceedings; ii) Co-Counsel speaks English, documents such as witness statements had been disclosed in both languages, and translations could be ordered on a case-by-case basis; iii) the Prosecution maintained that it did not have criminal records of its witnesses or any cooperation agreements with Rwanda; iv) the Defence had not previously raised problems with disclosure, and could not point to any document that was missing, but the parties were ordered to resolve this issue before the trial; and v) the request that the Prosecution should interview the Accused was wholly without merit. The Defence's grounds for postponement were therefore rejected. However, due to unforeseen circumstances relating to the unavailability of one of the judges, the trial had to be postponed to a date to be fixed.<sup>1</sup>

7. At the Pre-trial Conference, the Chamber also held that the preconditions for commencing a trial, set out in Rule 73 *bis* (B), have been met, and the trial was ready to commence.<sup>2</sup> Citing the Accused's wishes not to be represented, Lead Counsel for the Defence observed that the Defence could not say that it would be present when the trial commenced.<sup>3</sup> In light of Defence's statement, and pursuant to Rule 45 *quarter*, the Chamber ordered Counsel to be present when the trial commenced, in order to represent the Accused's interests, failing which sanctions would be imposed.<sup>4</sup>

8. During oral contact around 14 May 2004, the Defence accepted the Chamber's proposal to start the trial on 16 August 2004. On 21 May 2004, the President notified the parties that the trial would commence on that date.

9. On 6 July 2004, Co-Counsel for the Defence informed the Registry that due to medical reasons, Lead Counsel was not certain of his ability to appear for trial on 16 August 2004. The following day, the Registry conveyed to both Defence Counsel the President's regrets that Lead Counsel was ill. However, the trial would commence as scheduled on 16 August 2004. If, for medical reasons, Lead Counsel was not available, Co-Counsel should be prepared to replace him.

10. In a decision of 14 July 2004, the Chamber denied a Defence motion alleging defects in the form of the Indictment. In paragraph 4 of its decision, the Chamber criticized the Defence's practice of submitting its motions in a piecemeal fashion and warned him that it would consider an appropriate sanction.<sup>5</sup>

11. On 20 July 2004, Lead Counsel requested to withdraw from the case. He stated that his current state of health did not put him in an ideal position to manage insults, although he would continue to extend his cordial co-operation to his replacement and facilitate and expedite the taking over of the case. In its fax of 22 July 2004, the Registry's Defence Counsel Management Section (DCMS) responded by reminding Lead Counsel that under Rule 19 (A) of the Directive on Assignment of Defence Counsel ("the Directive"), Counsel could withdraw only in

<sup>1</sup> T. 13 May 2004 (Open Session) pp. 1-2.

<sup>2</sup> *Ibid.* p. 3.

<sup>3</sup> *Ibid.* p. 5.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Prosecutor v. Simba*, Decision on the Defence's Preliminary Motion Challenging the Second Amended Indictment (TC), 14 July 2004, para. 4.

exceptional circumstances. Further, pursuant to Rule 20 (A), Counsel has to remain on the case until he is replaced. In a letter of 22 July 2004 to his Lead Counsel, the Accused stated that he had not been notified by his Lead Counsel of the content of his email of 20 July 2004. Even if he expressed confidence in his Counsel and supported his protest against the language used by the Chamber, the Accused did not find the formulation so serious that it necessitated the abandoning of the conduct of his case less than one month before commencement of the trial. He was particularly frustrated that Lead Counsel had taken a decision with such grave consequences without first consulting him, and strongly urged Counsel to reconsider.<sup>6</sup>

12. Following Lead Counsel's request of 27 July 2004 for approval of his work programme to come to Arusha from 6 to 12 August 2004 to consult with his client, DCMS informed him that he would have to stay on to 16 August 2004 for the commencement of the trial. The work programme was approved on 30 July 2004, with respect to his travel and that of two Defence assistants. On 2 August 2004, Lead Counsel wrote to DCMS stating that as the work programme had been approved too late, the travel agency had cancelled their travel reservations, and that therefore he could not come to Arusha as planned. DCMS replied the same day, indicating that the approval was granted three days after the request, even though the usual practice is for such requests to be submitted 20 working days before the date of travel. In addition, as the trial was to commence on 16 August, he would have sufficient time to arrange for tickets, with the assurance that he would be reimbursed.

13. By email sent on 3 August 2004, Lead Counsel submitted a medical certificate of 3 August, which prohibited airplane travel for ten days due to illness. The character of the illness was not specified. DCMS responded the same day, in an email copied to Co-Counsel, that according to Rule 15 (E) and 20 (E)(i) of the Directive, Co-Counsel had to assume the responsibility for the case in the event of illness of Lead Counsel. In a further response on 5 August 2004, DCMS noted that the certificate was brief and lacked details, but that in any event, the certificate prohibited airplane travel up to 13 August 2004, and Counsel should therefore still attend trial on 16 August. If he is unable, Co-Counsel should, in his place, attend the Status Conference on 12 August 2004 and the trial, pursuant to Rule 15 (E) of the Directive. On 6 August 2004, Lead Counsel gave Co-counsel authorization to replace him during hearings and take all measures required during his period of unavailability.<sup>7</sup>

14. On 11 August 2004, the Registrar denied Counsel's request for withdrawal. Considering the Chamber's decision of 14 July 2004, Counsel's complaint against the statements therein, and the

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<sup>6</sup> French version: "Ceci étant dit, je ne trouve pas cet incident si grave au point de vous pousser à m'abandonner à moins d'un mois du commencement de mon procès. Je suis particulièrement frustré par le fait que vous avez pris une décision si grave de conséquences sur l'issue de mon procès sans m'en avoir préalablement informé. Sans avoir recueilli mon avis sur cette décision, mes intérêts n'ont pas été pris en considération. En conséquence de ce qui précède, je vous demande fermement de reconsidérer votre décision qui compromet sérieusement ma stratégie de défense et risqué de retarder considérablement mon procès et ma libération vu que je suis innocent."

<sup>7</sup> The authorization ("Procuration") of 6 August 2004 reads as follows: "Je soussigné Me Ayo ALAO, Conseil Principal de l'Accusé Aloys SIMBA, donne par la présente, procuration à Madame Beth LYONS, Co-conseil dans la même affaire, aux fins de prendre toutes les dispositions d'usage pour me substituer lors des audiences du Tribunal et faire toutes les diligences que requiert ledit dossier pendant toute la période de mon indisponibilité."

Accused's expressed wish that Lead Counsel should reconsider his position, there were no exceptional circumstances within the meaning of Article 19 of the Directive.<sup>8</sup>

15. During the Status Conference on 12 August 2004, Co-Counsel represented the Accused. She stated that the trial could not start in the absence of Lead Counsel and reserved Lead Counsel's right to re-open any issue. The Chamber noted her position and proceeded to clarify trial-related issues.

16. In a telephone conversation between a DCMS representative and Lead Counsel on 10 August 2004, Lead Counsel indicated that he would meet his doctor on 13 August 2004. If the doctor agreed, he might be able to travel to Arusha if injections could be administered to him every six hours for his backache, and if the former Chamber retracted paragraph 4 of its decision. It was conveyed to Lead Counsel by email on 12 August 2004 that the Tribunal's medical personnel was willing to administer the injections prescribed and provided by his doctor. On 13 August 2004, Lead Counsel expressed his disagreement with the Registrar's 11 August 2004 decision denying his request for withdrawal from the case, maintaining that paragraph 4 of the Chamber's decision affected the defence of the Accused. He also stated that he would meet with the Accused to convince him of the basis of his position.

17. On 16 August 2004, the Registry received an email from Lead Counsel with a new medical certificate attached. The certificate was dated 13 August 2004 and certified Lead Counsel for a rest and exemption from physical activities for eight days, and an arrangement in the exercise of his functions and travels during one month.<sup>9</sup> During the court session on 16 August 2004, Co-Counsel requested that the trial be postponed for one month. However, later that day, she informed the Chamber that Lead Counsel was not prevented from travelling, and that he would be able to come to Arusha next week.

18. In an email of 17 August 2004, Lead Counsel states, *inter alia*, that he remains committed to the defence of the Accused, and that he is willing, as soon as his health allows it next week, to come to Arusha and discuss with the Accused.<sup>10</sup>

## SUBMISSIONS

19. On 16 August 2004, Co-Counsel referred to Article 20 (4)(b) and (d) of the Statute and submitted that the Accused was entitled to a defence conducted by Lead and Co-Counsel. She was assigned as Co-Counsel in January 2004 and was allotted only 250 hours to work on the case. The conditions under Rule 15 (E) of the Directive on the replacement of Lead Counsel by Co-Counsel were not met in this case. Her language was English, and her conversational French did not permit her to discuss the Accused's case with him. Since Lead Counsel would be able to travel to Arusha after a month, a postponement of a month would be appropriate, especially at a

<sup>8</sup> Decision Denying the Request for Withdrawal of Assignment of Mr. Sadikou Alao as Lead Counsel for Mr. Aloys Simba, 11 August 2004.

<sup>9</sup> French version: "Un aménagement dans l'exercice de ses fonctions et dans les voyages pendant 1 mois."

<sup>10</sup> French version: "Je reste attaché à la défense de l'accusé Simba Aloys"; "... je suis donc disposé, dès que mon état de santé le permettra la semaine prochaine, à venir à Arusha pour m'entretenir avec l'accusé ...". The mail also refers to paragraph 4 of the 14 July 2004 decision and the need to discuss it with the President, who had previously accepted to meet with Lead Counsel.

stage as important as that of the commencement of the trial. In response to the bench, she stated that one of the Defence assistants was bilingual and the other French-speaking.

20. The Prosecution submitted that it was ready to start the trial, and that Co-Counsel should assume responsibility for the case in Lead Counsel's absence. If a postponement was ordered, it should not exceed a week.

21. Later on that day, Co-Counsel informed the Chamber that Lead Counsel had notified her that he would be able to arrive in Arusha next week (see above), instead of one month, and that the Chamber should expect an email from him to that effect.

## DELIBERATIONS

22. According to Article 20(4)(b) and (d) of the Statute, the Accused has the right to defend himself through legal assistance, and to communicate with Counsel, of his own choosing. He is also entitled to have legal assistance assigned to him where required by the interests of justice, without payment if he has insufficient means. Rules 44 to 46 and the Directive supplement the rights guaranteed by the Statute.

23. Rule 45 (I) states that it is understood that Counsel shall represent the Accused and conduct the case to finality. Pursuant to Rule 45 *ter* of the Rules, Counsel must provide a written undertaking to the Registrar of the Tribunal that he will appear before the Tribunal within a reasonable time as specified by the Registrar. Both Lead Counsel and Co-Counsel in the present case have signed such declarations. Article 6 of the Code of Professional Conduct for Defence Counsel states that unless representation is terminated, Counsel "must carry through to conclusion all matters undertaken for a client within the scope of his legal representation".

24. Article 15 (A) of the Directive provides for the Accused to have one Counsel assigned to him. Under Article 15 (C), the Registrar *may* appoint a Co-Counsel to assist assigned Counsel. The Accused therefore has a right to one Counsel, although the Registrar has the discretion to appoint a Co-Counsel to assist. Lead Counsel has primary responsibility for the Defence, pursuant to Article 15 (E), which also provides that Co-Counsel, under the authority of Lead Counsel, "may deal with all stages of the procedure and all matters arising out of the representation of the accused or of the conduct of his Defence".

25. The Chamber observes that the Accused wishes to be represented by Lead Counsel, who has stated that he remains committed to the defence of the Accused. Lead Counsel has also informed the Chamber of his intention to travel to Arusha next week. The Chamber notes that his email of 17 August 2004 leaves certain matters unclarified. His travel depends on his health; it is uncertain on which day he will arrive; and it is not explicitly stated that he will participate in the trial. However, the Chamber grants the request for postponement of the commencement of trial until no later than Monday 30 August 2004.

26. If Lead Counsel is not in Arusha on the stipulated date, ready for trial, Co-Counsel must be prepared to commence trial. Under Article 20 (E) of the Directive, Co-Counsel shall assume responsibility of carrying on the proceedings if Lead Counsel is not available. The Chamber


considers that the term “the proceedings” covers the entire proceedings against the Accused, not only the trial. Therefore, the Chamber may order Co-Counsel to assume Lead Counsel’s responsibilities also at the start of the trial.


27. Co-Counsel has submitted that she has French language problems, which make it difficult to function as Lead Counsel for the Accused, and that she has only been allotted 250 hours to work on the case. With respect to the language issue, it is now clear that there is a Defence Assistant on the Defence team who is bilingual, has legal training, and is therefore able to assist with communication within the Defence team. As for her time to prepare at the pre-trial stage, the Chamber observes that the postponement of trial will give her additional time. Moreover, the Chamber will consider requests for reasonable adjournments during trial.


**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the request for postponement of trial until no later than Monday 30 August 2004 08.45.

Arusha, 18 August 2004

  
Erik Møse  
Presiding Judge

  
Sergei Alekseevich Egorov  
Judge

  
Dennis C. M. Byron  
Judge

(Seal of the Tribunal)

