



JUR-97-31-I
25-8-2004
(921 — 915)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER II

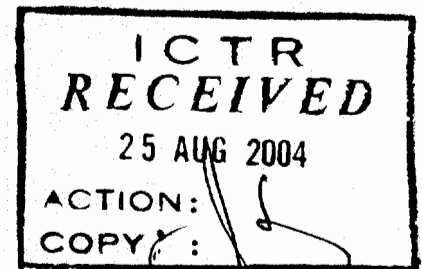
Before: Judge Arlette Ramaroson, Presiding
Judge William H. Sekule
Judge Solomy B. Bossa

Registrar: Mr. Adama Dieng

Date: 25 August 2004

Tharcisse RENZAHO

Case No. ICTR-97-31-I



**DECISION ON THARCISSE RENZAHO'S MOTION FOR HIS IMMEDIATE
RELEASE ON GROUNDS OF VIOLATIONS OF HIS RIGHTS UNDER ARTICLE 20
OF THE STATUTE AND RULE 40(D) OF THE RULES**

The Office of the Prosecutor:

Mr. Stephen Rapp
Ms. Charity Kagwi

Counsel for the Accused:

Mr. François Cantier

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (The "Tribunal"),

SITTING as Trial Chamber II composed of Judge Arlette Ramarason, presiding, Judge William H. Sekule and Judge Solomy B. Bossa (the "Chamber");

BEING SEIZED of the "*Requête article 40 paragraphe D du Règlement de preuve et de procédure,*" filed on 28 April 2003 (the "Motion");

CONSIDERING "The Prosecutor's Response to the Defence Motion Under Rule 40bis of the Rules of Procedure and Evidence," filed on 8 May 2003 (the "Prosecutor's Response"); **AND** the "Registry's Submission Under Rule 33(B) of the Rules on *Requête article 40 paragraphe D du Règlement de preuve et de procédure,*" filed on 26 May 2003 (the "Registry's Submissions"); **AND** "The Prosecutor's Further Response to the Defence Motion Under Article 40(D)," filed on 28 May 2003 (the "Prosecution's Further Reply"); **AND** "*Réplique à la deuxième réponse du Procureur à la requête de la défense en vertu de l'article 40 paragraphe D du Règlement de procédure et de preuve,*" filed on 17 July 2003 (the "Defence Reply to the Prosecution's Further Reply");

CONSIDERING the Statute of the Tribunal (the "Statute"), in particular Article 20(4), and the Rules of Procedure and Evidence (the "Rules"), specifically Rules 40(D), 40bis and 53bis(A);

NOW DECIDES the matter, pursuant to Rule 73(A), on the basis of the written briefs filed by the Parties.

BACKGROUND

1. On 16 July 1997, Judge Laïty Kama issued an Order, pursuant to Rule 40bis for the provisional detention and transfer of Tharcisse Renzaho to the Seat of the Tribunal for a maximum period of thirty days.¹
2. On 27 September 2002, Judge Andrésia Vaz issued an Order, pursuant to Rule 40bis, for the transfer and provisional detention of Tharcisse Renzaho for a maximum period of 30 days, following the Prosecution's request of 26 September 2002 that the authorities of the Democratic Republic of Congo arrest and detain Tharcisse Renzaho.²
3. On 29 September 2002, Tharcisse Renzaho was transferred to the Seat of the Tribunal.
4. On 3 October 2002, Tharcisse Renzaho was brought before Judge Andrésia Vaz in conformity with Rule 40bis(J) of the Rules. At this hearing, it was explained to him *inter alia* that, "Pursuant to Article 40bis of the Rules, your detention cannot exceed 30 days beginning with the day following your transfer to the detention, and, during this time, the Prosecutor must issue an indictment [...] And the Trial Chamber will have to confirm your indictment. If there are any difficulties with respect to this investigation, a Judge from the Trial Chamber may, following a request made by the Prosecutor and following an *inter partes* hearing, and

¹ *Prosecutor v. Renzaho* (ICTR-97-31-I) "Order for Transfer and Provisional Detention (In Accordance with Rule 40bis)" of 16 July 1997

² *Prosecutor v. Renzaho* (ICTR-97-31-I) "Order for the Transfer and Provisional Detention (Rule 40bis)" of 27 September 2002 (the "Order for the transfer and Provisional Detention of 27 September 2002")

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before the end of the period of detention, decide to extend the provisional detention for a further period not exceeding 30 days. The total period of provisional detention cannot go beyond 90 days".³

5. On 25 October 2002, an Indictment, in English, dated 23 October 2002 together with the supporting material, was filed with the Registry.

6. On 28 October 2002, that is to say one day before the expiration of the 30 days following Tharcisse Renzaho's transfer to the Seat of the Tribunal, the Prosecution filed an extremely urgent motion for extension of Tharcisse Renzaho's provisional detention under Rule 40bis(F). On 29 October 2002, the Prosecution's extremely urgent motion was heard by Judge Erik Møse who granted an extension. A written Decision was issued on 4 November 2002 by Judge Erik Møse ordering pursuant to Rule 40bis(F) the extension of the provisional detention of Tharcisse Renzaho for an additional period of, "21 days expiring on Tuesday, 19 November 2002, pending confirmation of his indictment."⁴

7. On 15 November 2002, Judge Winston Churchill Matanzima Maqutu confirmed the Indictment against the Accused.

8. On 21 November 2002, Tharcisse Renzaho (hereinafter referred to as the "Accused") made an initial appearance before Judge Navanethem Pillay where he informed the Court that he had been served with the Indictment on 19 November 2002 in English and in French, the French version being an unofficial translation.⁵ The Prosecution informed the Chamber that a harmonized French Indictment would be filed with the Registry as soon as possible.⁶ In the meantime, during the initial appearance, the version of the Indictment with the unofficial French translation was read to the Accused in French, and he told the Chamber that he understood¹ the Indictment and pleaded not guilty to the three charges therein contained.⁷

9. On 29 November 2002, an official copy of the French Indictment was filed with the Registry.

SUBMISSIONS

The Defence Submissions

10. The Defence requests the immediate release of the Accused on grounds that the Prosecution has violated the Accused's rights enshrined under Article 20(4) of the Statute, Rules 40(D) and 53bis(A) of the Rules, Article 14(3) of the United Nations International Convention on Civil and Political Rights (the "ICCPR"), and Articles 5(2) and 6(3) of the European Convention on Human Rights (the "ECHR").

11. The Defence submits that that the Accused was transferred to the Seat of the Tribunal on 29 September 2002, and, that he should have received the Indictment against him within 20 days following his transfer to the Seat of the Tribunal, that is to say, by 19 October 2002.

³ T. of 3 October 2002, p. 6

⁴ *Prosecutor v. Renzaho*, Case No. ICTR-97-31-1, "Decision on the Prosecution Request for Extension of the Suspect's Detention; Rule 40bis(F) of the Rules," 4 November 2002

⁵ T. of 21 November 2002 p. 3

⁶ T. of 21 November 2002 p. 6

⁷ T. of 21 November 2002 p. 18

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The Defence submits that the Accused was not so notified. Rather he received the Indictment against him dated 11 November 2002, on 19 November 2002. The Defence submits that filing the said Indictment outside the 20-day time frame provided under Rule 40(D) resulted in the violation of the rights of the Accused. Consequently, the Defence argues that the Tribunal should order his immediate release.

12. The Defence further submits that in the Order for Transfer and Provisional Detention under Rule 40*bis* of 27 September 2002, the Prosecution was specifically requested to file the Indictment against the Accused within 30 days following his transfer to the Seat of the Tribunal. According to the Defence, at a hearing of 22 October 2002, the Tribunal was not aware of the Indictment against the Accused. The Indictment against him, dated 11 November 2002, was received on 19 November 2002. This Indictment was later modified on 12 December 2002. The Defence argues that the Prosecution was unable to meet the deadlines to present the Accused with the Indictment against him.

13. Furthermore, the Defence submits that the Accused's rights under Article 20(4)(a) of the Statute and Rule 53*bis*(A) of the Rules were violated because he was not informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him, nor was he served with the Indictment when he was taken into custody or as soon as possible thereafter.

The Prosecution Submissions

14. The Prosecution requests that the Chamber reject the relief sought by the Defence in its Motion because it is without merit.

15. The Prosecution submits that the Accused has already made his initial appearance and has formally pleaded to the charges against him and therefore is no longer being held provisionally under Rule 40*bis*.

16. The Prosecution submits that the Accused's rights under the ICCPR have not been violated because the Indictment and Supporting Material were served upon him in a timely manner as required by the Rules.

The Registry's Submissions

17. The Registry submits its observations on this matter pursuant to Rule 33(B) of the Rules. The Registry notes written complaints dated 31 March 2003 from Counsel for Renzaho, Mr. François Cantier, that *inter alia* the Indictment of 23 October 2002 against the Accused had not then been served upon the Accused or his Counsel.

18. The Registry submits that, by electronic mail dated 15 April 2003, it notified the Defence that the Indictment of 23 October 2002 was an unofficial document and therefore could not be communicated to the Accused and his counsel, as such. The Defence acknowledged receipt of this electronic mail.

19. The Registry submits that there was no legal obligation, under the Statute, the Rules or the jurisprudence of the Tribunal for disclosure of the Indictment of 23 October 2002 to the Defence. The Registry submits that this indictment became moot as a result of the

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amended Indictment dated 11 November 2002, which was filed by the Prosecution during the confirmation process before a Judge of the Tribunal.

The Defence Reply

20. The Defence maintains that its Motion is based on Rule 40(D) of the Rules, not on Rule 40bis as the Prosecutor submits. The Defence notes that the procedure under Rule 40(D) is conducted in an *ex parte* hearing where the Accused has no opportunity to contest his denial of liberty. The Defence recalls the Decision of 8 October 2001 rendered by Trial Chamber I, in the case of *Nchamihigo*. In that Decision, the Chamber observed that, "[...] the process being *ex parte* does not prevent the individual concerned, once a suspect or an accused, as in the instant case, from subsequently challenging its legality as applied to him."⁸

21. The Defence recalls that the Accused was transferred to the Seat of the Tribunal on 29 September 2002 and that, when he was brought before the Tribunal on 3 October 2002, Judge Vaz observed that, pursuant to Rule 40(D), the Prosecution had 20 days within which to submit an Indictment against him. The Prosecution did not present a confirmed Indictment against the Accused within the prescribed period. Rather the Prosecution filed an Indictment against him on 23 October 2003. Accordingly, by strict application of the provisions of Rule 40 (D) of the Rules, the Defence argues the rights of the Accused have been violated, so he should be released.

The Prosecution Further Reply

22. The Prosecution reiterates the requests made in its Response and submits that the Accused was arrested pursuant to Rule 40bis and not pursuant to Rule 40(D).

The Defence Reply to the Prosecution Further Reply

23. The Defence argues that the Prosecution in its Response at paragraph 2, submitted that the Accused was arrested pursuant to Rule 40. Therefore, the Prosecution cannot now submit that the Accused was not arrested pursuant to Rule 40. The Defence further submits that, during the hearing of 3 October 2002, Judge Vaz reminded the Prosecution that, pursuant to Rule 40(D), it had 20 days following the transfer of the Accused to the Seat of the Tribunal to file an Indictment against the Accused.

24. The Defence therefore requests that, in strict application of Rule 40(D), the Chamber order the immediate release of the Accused.

⁸ See *Prosecutor v. Nchamihigo* [Case No. ICTR-2001-76-I] at para 5 of "Decision on the Defence Motion for the Release of the Accused Rule 40bis, 72 and 73 of the Rules," English translation filed on 30 May 2002.

DELIBERATIONS

Regarding Violations of Rule 40bis

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25. The Chamber notes that, under Rule 40bis, a Judge may order the transfer and provisional detention of a suspect to the Detention Unit of the Tribunal once certain conditions are met, including the Prosecution's request that a State arrest the suspect and place him in custody, in accordance with Rule 40, or detention of the suspect by the State.

26. The Chamber recalls the Appeals Chamber's Decision of 3 November 1999 in the case of *Barayagwiza* which affirmed the important differences between Rule 40 and Rule 40bis which both apply to the provisional detention of suspects.⁹ In that Decision, the Appeals Chamber noted for example that when a suspect is provisionally detained under Rule 40, the Prosecutor is mandated to issue an indictment within 20 days of the transfer of the suspect to the Tribunal's Detention Unit. However, when a suspect is provisionally detained under Rule 40bis, the Prosecution has a maximum of 90 days of the transfer of the suspect to the Tribunal's Detention Unit, within which to issue an indictment.

27. The Chamber notes that, contrary to the submissions of the Defence, the Accused was transferred and provisionally detained pursuant to Rule 40bis and not Rule 40(D). This is very clear from both the title and the contents of the Order of Judge Vaz dated 27 September 2002.¹⁰ In that Order Judge Vaz indicated that the suspect was to be provisionally detained for a period not exceeding 30 days and that the Prosecution was to file an indictment against him before the expiration of the 30 day period. Therefore, the rights of the Accused regarding his arrest, transfer and detention were governed under the provisions of Rule 40bis.

28. The Chamber recalls that, on 28 October 2002, one day before the expiration of the 30 days following the transfer of the Accused to the Seat of the Tribunal, the Prosecution filed an extremely urgent motion under Rule 40bis (F), for extension of his provisional detention. On 29 October 2002, the Prosecution's extremely urgent motion was heard and Judge Erik Møse granted an extension. A written Decision, issued on 4 November 2002 followed, in which Judge Erik Møse ordered, pursuant to Rule 40bis (F), the extension of the provisional detention of for an additional period of "21 days expiring on Tuesday 19 November 2002, pending confirmation of his indictment." The Chamber notes that the Indictment against the Accused was confirmed on 15 November 2002, before the expiration of said additional time.

29. Accordingly, the Chamber finds that there has not been any violation of the provisions of Rule 40bis of the Rules and, accordingly, denies the Defence Motion on this ground. Given this finding, it is not necessary to enter upon further discussions regarding why the Accused may still not be entitled to the relief he seeks in this motion had he been transferred or *provisionally* detained under Rule 40.

⁹ See para. 47 of the *Barayagwiza* Appeal Chamber Decision of 3 November 1999

¹⁰ See also the Order for the Transfer and Provisional Detention made by Judge Kama on 16 July 1997.

Regarding Violations of Article 20(4)(a) and Rule 53bis(A)

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30. The Chamber recalls the provisions of Article 20(4)(a) saying, "In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: to be informed promptly and in a language he or she understands of the nature and cause of the charges against him or her." Rule 53bis(A) provides, "Service of the indictment shall be effected personally on the accused at the time the accused is taken into the custody of the Tribunal or as soon as possible thereafter."

31. The Chamber notes that, prior to the confirmation of the Indictment against the Accused, he was a suspect who was provisionally detained at the Tribunal. A careful review of the chronology of events outlined at paragraphs 1 – 9 of this Decision indicates that the Indictment against the Accused was confirmed by Judge Winston Churchill Matanzima Maqutu on 15 November 2002, that it was served on the Accused on 19 November 2002 and that he made his initial appearance before Judge Navanethem Pillay on 21 November 2002. During his initial appearance, the Indictment was read to the Accused in French, and he told the Chamber that he understood. He then pleaded not guilty to the three charges against him.

32. In the Chamber's opinion, the Accused rights under both Article 20(4)(a) of the Statute and Rule 53 bis(A) of the Rules were not violated. The Chamber notes that during his initial appearance it was pointed out that the original Indictment was in English and that the French version available was an unofficial translation containing typographical and numbering errors as noted by Judge Navanethem Pillay.¹¹ Further, the Prosecution informed the Chamber that it would harmonize the unofficial French translation of the Indictment with the English original as soon as possible. On 29 November 2002, an official copy of the French translation of the Indictment was filed with the Registry. Accordingly, the Chamber is satisfied that the Accused was promptly served with the Indictment against him in a language he understood and denies the Defence request in that respect.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 25 August 2004

Judge Arlette Ramaroson
Presiding Judge

William H. Sekule
Judge

Solomy B. Bossa
Judge



¹¹ Transcript of 21 November 2002 pp 21, 22