



ICTR-98-41-T
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
25-04-2005
(24501 - 24499)

24501
Ivan

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 25 April 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2005 APR 25 P 12:16
[Signature]

DECISION ON PROSECUTION MOTION FOR SANCTIONS

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Paul Skolnik
René Saint-Léger
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershon Otachi Bw'Omanwa

[Handwritten initials]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”), 24500

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

BEING SEIZED OF the “Prosecution motion for an order directing counsel for Accused Ntabakuze to comply immediately with the Trial Chamber’s order of 1 March 2005”, filed on 8 March 2005;

CONSIDERING the Response of the Accused Ntabakuze, filed on 15 March 2005; and the Reply of the Prosecution, filed 16 March 2005;

HEREBY DECIDES the motion.

INTRODUCTION

1. During a status conference on Tuesday 1 March 2005, the Chamber ordered the Defence teams for Bagosora, Nsengiyumva and Ntabakuze to each provide, by the “end of the week”, a list of its likely witnesses for the upcoming trial session.¹ Having received no such list by Monday 7 March 2005, the Prosecution sent an email requesting the Ntabakuze Defence to comply with the order. On 8 March 2005, the Prosecution filed the present motion. On that same day, the Defence provided the list in question by email, and apologized for the delay, citing logistical problems and travel of counsel.

SUBMISSIONS

2. The Prosecution requests four remedies in its motion: (i) an order to counsel for Ntabakuze to comply with the 1 March 2005 order; (ii) postponement of cross-examination of any Ntabakuze witnesses of the same duration as the delay in compliance; (iii) a warning to counsel for Ntabakuze that such delays constitute a violation of Rule 46 of the Rules of Procedure and Evidence (“the Rules”); (iv) denial of costs arising from any response to the present motion. The Prosecution concedes that the requested order is now moot, but insists that the “issue of sanctions” is still before the Chamber because of what it characterizes as “a pattern of non-compliance”.²

3. The Defence argues that providing the list on 8 March 2005 was in compliance with one reasonable interpretation of the Chamber’s order; in the alternative, that even if the list was filed slightly late, that no prejudice has been caused to the Prosecution. The relief requested by the Prosecution is said to be punitive and out of proportion to the actual circumstances.

DELIBERATIONS

4. The only remaining issue raised by the motion relates to the imposition of sanctions. According to Rule 46 (A), a Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. The Chamber finds that the Ntabakuze Defence did not respect the deadline to provide the list of witnesses “within the end of the week”. Contrary to what is argued by the Ntabakuze Defence, this formulation was clear, as illustrated by the fact that the other two Defence teams complied with the order within the prescribed time-limit.

¹ T. 1 March 2005 p. 17.

² Motion, para 5.

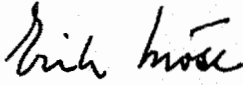
hw

5. On the other hand, the non-compliance was cured shortly after the deadline. No adequate showing has been made of a pattern of non-compliance, which would require the Chamber to more carefully scrutinize the explanations and apologies for the delay offered by the Defence.

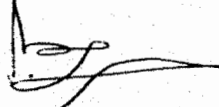
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 25 April 2005



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

