



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-PT
30-9-2005
(3569-3565)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 30 September 2005

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-PT

DECISION ON THE DEFENCE MOTION FOR CONTINUANCE OF TRIAL

Rule 73(A) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Wallace Kapaya
Gina Butler
Ismail Iskandar
Jane Mukangira

Defence Counsel

John Philpot
Peter Zaduk

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

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Karin Hökberg and Gberdao Gustave Kam ("Chamber");

BEING SEIZED of the "Requête Pour la Remise Du Procès" filed by the Defence on 17 September 2005 ("Motion");

CONSIDERING the Prosecutor's Response to the Defence Motion to Postpone Date of Commencement of Trial, filed on 22 September 2005 ("Response"); and the Defence Reply thereto, both filed on 22 September 2005;

DECIDES as follows pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("Rules").

INTRODUCTION

1. The present trial is scheduled to begin on 3 October 2005. A status conference was held with the parties on 10 September 2004, where they agreed to be ready for trial on the date set. In particular at the status conference, the Prosecution stated that investigations were complete in this case. Further status conferences were held on 4 and 6 May 2005.
2. The Defence now requests that the trial be postponed for the following reasons:
 - (a) The Defence only received the evidence that will be given by a new witness, Witness ADE, on 24 August 2005, which remains incomplete. It contends that it has not been given enough time to investigate this important witness and must re-investigate the witnesses scheduled to testify in the first session who are affected by the statements of Witness ADE;
 - (b) The information regarding Witness ADE is new evidence, which has significantly expanded the scope of the case and has affected the testimony of several witnesses;
 - (c) Witness ADE's statements have not been disclosed in English;
 - (d) The Pre-Trial Brief added eight new witnesses to the Prosecution witness list;
 - (e) Other witness statements were belatedly disclosed, less than 60 days prior to trial as required;
 - (f) The judicial records for Witnesses ATN and ATM have only been disclosed in Kinyarwanda, which is of no use to Counsel for the Accused;
 - (g) Unredacted versions of witness statements were not disclosed 21 days before the start of the trial as required;
3. The Defence states that the Prosecution's actions of delayed disclosure prejudice the Accused. It relies on the Decision of 2 March 2005 where the Chamber states the right of the Accused to prepare his defence when circumstances change.¹ Due to the above-stated

¹ *The Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-R50, Decision on the Prosecution Conditional Motion for Leave to Amend the Indictment and on the Defence Counter-Motion Objecting to the Form of the Recast Indictment (TC), 2 March 2005, para. 14.

circumstances, the Defence requests that the Scheduling Order of 6 May 2005 be cancelled, the start of the trial be postponed, and a Status Conference be scheduled for 15 January 2006.

4. The Prosecution opposes the Motion. In particular, it answers that it could not disclose the statements of Witness ADE on the basis of Rule 70(B) of the Rules. As a solution to the late disclosures, the Prosecution states that it will not call Witness ADE until the second phase of trial, which will cure any apparent prejudice caused by the delay to the Defence. It further relies on its responses to the Defence motions requesting the Chamber to exclude evidence of certain witnesses.²

DISCUSSION

5. Article 19(1) of the Tribunal's Statute ("Statute") mandates the Chamber to ensure that a trial is fair and expeditious while respecting the rights of the Accused. The Accused was arrested on 26 July 2001 and his initial appearance took place on 10 October 2001. The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY") decided that when considering the preparation and presentation of the Defence case, a Trial Chamber must "balance the need for the accused to have adequate time for the preparation of his case and the need for an expeditious trial."³ When deciding a trial's schedule, the Chamber must consider all the relevant factors, appropriate concerns, and then use its discretion.⁴ Finally, the Chamber must decide whether the Accused are disadvantaged when presenting their case.⁵

6. The Chamber notes that the Prosecution has admitted its delay in disclosing the statements of Witness ADE, which are extensive in size and scope and its offer not to call Witness ADE to testify until the second trial session, giving the Defence at least four months to conduct investigations on this issue. The Defence opposes this argument and asserts that its investigators are already busy with other witnesses until the second trial session.

7. The remedy of a continuance is not the only remedy for a violation of the Prosecution's disclosure obligations. At this time, four years after the Accused was arrested, at this stage, being few days before the commencement of the trial as scheduled, and considering the concerns of the Defence, the Chamber does not consider that granting a continuance would be the appropriate remedy. During the trial process, the Defence is free to seek an appropriate remedy for any alleged disclosure violation, and such requests will be decided by the Trial Chamber on a case-by-case basis.

² See Prosecutor's Response to the Defence Motion and Supplement for Additional Disclosure Under Articles 66 and 68 of the Rules of Procedure and Evidence in Respect of Witness ADE, filed on 12 September 2005; Prosecutor's Response to Defence Motion to Exclude Witnesses BIW, BIY, BIV, AVY, APJ, BCW, BIU and Mr. Zuhdi Janbek, OTP Investigator filed on 22 August 2005; Prosecutor's Response to the Defence Motion to Exclude Witness ATM, filed on 1 September 2005.

³ *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-AP73, Decision on Interlocutory Appeal by the *Amici Curiae* against the Trial chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, para. 8.

⁴ *Id.* paras. 16-17.

⁵ *Prosecutor v. Mladen Naletilic and Vinko Martinovic*, Case No. IT-98-34-PT, Decision on the Accused Naletilic's Motion to Continue Trial Date, 31 August 2001, para. 7.

8. Finally, the Chamber considers that the Defence's argument regarding the eight new witnesses is an issue to be dealt with as submitted by the Defence in his separate motions to exclude their testimony, which should be decided once the trial has begun. This concern does not impede on the Defence's ability to start the trial.

9. After considering all of the relevant factors in this case, and noting possible alternatives to solve the concerns of the Defence, the Chamber is of the view that the rights of the Accused will not be violated by starting the case as originally planned on 3 October 2005.

**FOR THE ABOVE MENTIONED REASONS, THE CHAMBER
DENIES the Motion.**

Arusha, 30 September 2005, done in English.

Dennis C. M. Byron
Presiding



Gberdao Gustave Kam
Judge