



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 12 October 2005

ICTR-98-42-T
12-10-2005
(11551 — 11547)

2005 OCT 14 P 5:35

The PROSECUTOR

v.

Arsène Shalom NTAHOBALI and Pauline NYIRAMASUHUKO

Case No. ICTR-97-21-T

Joint Case No. ICTR-98-42-T

**DECISION ON ARSÈNE SHALOM NTAHOBALI'S MOTION FOR
RECONSIDERATION OF THE "DECISION ON ARSÈNE SHALOM
NTAHOBALI'S MOTION FOR CERTIFICATION TO APPEAL THE DECISION ON
THE DEFENCE MOTION TO MODIFY THE LIST OF DEFENCE WITNESSES
FOR ARSÈNE SHALOM NTAHOBALI"**

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Defence Counsel for Ntahobali

Mr Normand Marquis, Lead Counsel
Mr Louis Huot, Co-Counsel

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

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”);

BEING SEISED of the “*Demande de Arsène Shalom Ntahobali en reconsidération de la «Decision on Arsène Shalom Ntahobali’s Motion for Certification to Appeal the Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali»*” filed on 28 September 2005 (the “Motion”);

CONSIDERING the «Prosecutor’s Response to the Request for Reconsideration of the Decision on Arsène Shalom Ntahobali’s Motion for Certification to Appeal the Decision on the Defence Motion to Modify the List of Defence Witnesses under Article 73 of the Rules of Procedure and evidence” filed on 3 October 2005 (the “Prosecution Response”);

RECALLING the «Decision on the Defence Motion to Modify the List of Witnesses for Arsène Shalom Ntahobali» filed on 26 August 2005 (the «Modification Decision of 26 August 2005»);

RECALLING the «Decision on Arsène Shalom Ntahobali’s Motion for Certification to Appeal the «Decision on the Defence Motion to Modify the List of Witnesses for Arsène Shalom Ntahobali,»» filed on 21 September 2005 (the «Certification Decision of 21 September 2005»);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

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

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence requests the Chamber to reconsider the Certification Decision of 21 September 2005. The Defence submits that the sole reason for rejection of its Motion for Certification of the Modification Decision of 26 August 2005 is found at paragraph 23 of the Certification Decision of 21 September 2005, which reads:

The Chamber notes that the impugned decision was rendered on 26 August 2005. Upon application of Rule 73(C), the Chamber observes that the Defence should have filed its Motion for certification of appeal on 1 September 2005 to fall within the time-limits provided. The Defence does not provide the Chamber with an explanation for the delay in the submission of this Motion for certification to appeal, save that it received the impugned Decision on 29 August 2005. Given that Rule 73(C) is clear and unambiguous, the Chamber finds this Motion has been filed out of time and is therefore time barred.

2. Recalling the provisions of Rule 73(C), the Defence accepts that the time for filing a Motion for certification starts running 7 days following the filing of the impugned decision and not following the time when a Party receives the impugned decision.

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3. The Defence argues that in filing its Motion for certification on 2 September 2005, it was within the time limits set under Rule 73(C) because computation of the time-limits should have begun the day after the filing of the Modification Decision of 26 August 2005, i.e. on 27 August 2005. It maintains that such a computation of the time-limits set in Rule 73(C) arises from principles of interpretation of law as found in a number of national jurisdictions, as well as in Article 33 of the Vienna Conventions.

4. The Defence submits that Article 13 of the *Directive pratique relative à la procédure de dépôt des écritures en appel devant le Tribunal* provides *inter alia* that the time-limits set start running from the day following the filing.¹ Therefore, the Defence submits that where the Rules are silent regarding when commencement of time-limits start, the manner of computing the running of the time-limits should be similar to that provided under Article 13 of the above-mentioned Directive. The Defence argues that since the Rules are silent then the Chamber should have favoured the Defence when interpreting the Rule.

5. In arguing for a reconsideration of the Certification Decision of 21 September 2005, the Defence makes reference to the jurisprudence of the Tribunal and the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Defence submits that the Accused has suffered prejudice as a result of the Chamber's rejection of its Motion to Certify following an erroneous computation of the time-limits under Rule 73(C) for the filing of such a Motion.

6. The Defence thus prays that the Chamber reconsider its Certification Decision of 21 September 2005 and grant the Certification to appeal the Modification Decision of 26 August 2005.

The Prosecution Response

7. The Prosecution objects to the Defence Motion, submitting that the Motion is procedurally wrong and that the Defence should have filed a request for certification to appeal the Decision they deem erroneous. Regarding reconsideration, the Prosecution makes reference to the jurisprudence of the Tribunal, submitting that it takes no position on the interpretation of the Rules governing the computation of the time-limits within which to file motions because this is a matter for the determination by the Chamber. The Prosecution thus prays that the Chamber deny the Motion and make any other orders it deems fit in the circumstances.

HAVING DELIBERATED

8. The Chamber has considered all the submissions of the Parties.

9. The Chamber notes that it possesses an inherent discretionary power to revisit its own previous decision, distinct from the review procedure provided for under Rule 120 and that this power should be used sparingly in order to maintain the principle of finality of litigation.²

¹ See paras. 10 and 13 of the Motion

² See *Prosecutor v. Kanyabashi* Case No. ICTR-96-15-T, (AC) Decision (Motion for Review or Reconsideration) of 12 September 2000; *Prosecutor v. Karemera et al.* ICTR-98-44-T, (TC) Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005 (the "Karemera Decision of 29 August 2005") at para. 8; *Prosecutor v. Bagosora et al.* Case No. ICTR-98-41-T,

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10. The Chamber recalls the jurisprudence of the Tribunal on reconsideration of a decision: a party seeking reconsideration must demonstrate special circumstances warranting such reconsideration.³ The special circumstances that may warrant a reconsideration include; (i) where a new fact has been discovered that was not previously known to the Chamber; (ii) where new circumstances have arisen since the filing of the impugned decision that affect the premise of the impugned decision; (iii) or where a Party shows an error of law or that the Chamber has abused its discretion, and an injustice has been occasioned.⁴

11. In the instant case, the Chamber notes that the Defence essentially argues that the Chamber ought to have commenced counting the time-limits for filing the Defence Motion under Rule 73(B) from the day after the filing of the Modification Decision of 26 August 2005, in conformity with Article 13 of the *Directive pratique relative à la procédure de dépôt des écritures en appel devant le Tribunal*, and not from the very day when the Modification Decision of 26 August 2005 was filed with the Registry. The Defence submits that this erroneous computation of the time-limits lead to the dismissal of the request for certification to appeal the said Modification Decision of 26 August 2005 thus denying the Defence the opportunity to have the Appeals Chamber decide on the matter, were the Chamber to have granted certification to appeal.

12. The Chamber recalls the provisions of Rule 73 (C) which reads as follow: “Requests for certification shall be filed within seven days of the filing of the impugned decision [...].” The Chamber reiterates its opinion as stated in the Modification Decision of 26 August 2005: “Rule 73(C) is clear and unambiguous [...]” as to the time-limits within which Motions filed under it should be filed, i.e., within seven days of the filing of the impugned decision.

13. In light of the foregoing, the Chamber is of the opinion that reliance by the Defence on Article 13 of the *Directive pratique relative à la procédure de dépôt des écritures en appel devant le Tribunal* in the instant case, is simply erroneous. The Chamber is therefore not convinced by the Defence submission that the time-limit under Rule 73(C) should start to run on the day after the filing of the impugned decision. Accordingly, the Chamber denies the request for reconsideration of the Certification Decision of 21 September 2005 as there was no error made in computing the time-limits which thereby occasioned an injustice upon the Accused.

(TC) Decision on Defence Motion for Reconsideration of the Decisions rendered on 29 November 2001 and 5 December 2001 and for Declaration of Lack of Jurisdiction, filed on 28 March 2002 at para. 21

³ See *Prosecutor v. Nzirorera et al.* ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, of 10 October 2003 at para. 6;

⁴ The *Karemera* Decision of 29 August 2005 at para. 8; *Prosecutor v. Nyiramasuhuko et al.* ICTR-98-42-T, (TC) Decision on Nyiramasuhuko Motion for Reconsideration of the “Decision on Defence Motion for Certificate to Appeal the ‘Decision on Defence Motion for Stay of Proceedings and Abuse of Process’” of 20 May 2004; *Prosecutor v. Bagosora* ICTR-98-41-T (TC) Decision on Defence Motion for reconsideration of the Trial Chamber’s Decision and Scheduling Order of 5 December 2001, of 18 July 2003; *Ngeze et al v. the Prosecutor* (ICTR-99-52-A) (AC) Decision on Ngeze’s Motion for Reconsideration of the Decision Denying an Extension of Page Limits His Appellant Brief (AC), 11 March 2004, p.2; ; *Niyitegeka v. Prosecutor* Case No. ICTR-96-14-A (AC) Decision on Defence Extremely Urgent Motion for Reconsideration of Decision dated 16 December 2003 of 19 December 2003; *Niyitegeka v. the Prosecutor* Case No. ICTR-96-14-A (AC) Decision on Eliezer Niyitegeka’s Urgent Motion for Reconsideration of Appeals Chamber Decision dated 3 December 2003 of 4 February 2004; *Prosecutor v. Bagosora* Case No. ICTR-98-41-T (TC) Decision on Reconsideration of Order to reduce Witness List and on Motion for Contempt for Violation of that order of 1 march 2004 at para. 11.

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FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DENIES the Motion in its entirety.

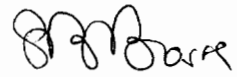
Arusha, 12 October 2005



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

