



ICTR-00-55A-T
14-10-2005
(2910-2907)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registrar: Mr Adama Dieng

Date: 13 October 2005

THE PROSECUTOR

vs.

THARCISSE MUVUNYI

ICTR-2000-55A-T

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**DECISION ON THARCISSE MUVUNYI'S MOTION
FOR CONTINUANCE OF TRIAL SESSION**

Prosecution Counsel

Mr Charles Adeogun-Phillips, Senior Trial Attorney
Ms Adesola Adeboyejo, Trial Attorney
Ms Renifa Madenga, Trial Attorney
Ms Memory Maposa, Assistant Trial Attorney
Mr Dennis Mabura, Case Manager

Defence Counsel

Mr William E. Taylor, III, Lead Counsel
Mr Jean Flamme, Co-Counsel
Ms Cynthia Cline, Legal Assistant
Ms Véronique Pandanzyla, Legal Assistant

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

SITTING as Trial Chamber II composed of Judge Asoka de Silva, Presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey (the “Chamber”);

BEING SEIZED of “Tharcisse Muvunyi’s Motion for Continuance of Trial Session” filed on 6 October 2005 (the “Motion”);

NOTING THAT the Prosecution has not filed a response;

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular Rule 73 *ter* of the Rules;

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

SUBMISSION OF THE DEFENCE

1. The Defence for the Accused Tharcisse Muvunyi requests an adjournment of the proceedings in this matter “until early 2006” instead of 14 November 2005.
2. The Defence submits that before the end of the last session, at the direction of the Presiding Judge, Muvunyi’s Lead Counsel met with the President of the Tribunal and explained to him the difficulties the Defence Team was facing with respect to balancing personal and professional commitments with the Tribunal’s schedule.
3. The Defence alleges that as a result of Hurricane Rita, which recently hit the Houston metropolitan area, Lead Counsel had to evacuate; that there were electricity and gas shortages as well as “severe traffic problems”; and that “Lead Counsel’s house and property also sustained some wind damage that will require his personal attention.”
4. Additionally, the Defence submits that since most of its witnesses “were on holiday in Europe” during the months of July and August, Lead Counsel was not able to interview them during that period. It also asserts that “Lead Counsel is the only attorney representing” a certain juvenile defendant in the Texas criminal justice system and that the said defendant “would suffer great harm should Lead Counsel not be able to appear in his behalf” before a decision is rendered in that matter in December 2005.
5. The Defence also argues that Co-Counsel is currently “attempting to obtain access to genocide case files and investigations from the Belgium Prosecutor’s office” and that some of the material, including the testimony of Muvunyi’s former superior Marcel Gatsinzi, could reveal the names of potential Defence witnesses and could be exculpatory.
6. The Defence submits that whereas in the preliminary statement of Prosecution Witness CCR it was alleged that the witness participated in one meeting that was also attended by the Accused Muvunyi, on the date of the witness’s testimony the Defence was notified of a change in the dates of the meetings and that there were two alleged meetings instead of one. The Defence asserts that it was not given notice of any



meetings held in the Nyakizu *commune* in the Indictment; that this “last minute change” in Witness CCR’s testimony has “materially affected” Muvunyi’s ability to defend against these charges; and that the Defence “needs more time to locate and talk with potential witnesses.”

7. The Defence also argues that a “former high level African government official” has recently indicated his willingness to testify in favour of Muvunyi, but that this potential witness “will only talk to Lead Counsel.” Therefore, asserts the Defence, arrangements have to be made for Lead Counsel to talk to the witness “and arrange for his valuable exculpatory testimony.”
8. Finally, the Defence submits that Muvunyi’s Co-Counsel “does not have adequate common law and trial experience” to represent the Accused in these proceedings in the absence of Lead Counsel and that the Muvunyi Defence Team is not ready to proceed on 14 November 2005.

HAVING DELIBERATED,

9. The Chamber recalls Article 19(1) of the Statute, which requires the Chamber to ensure that the trial is “fair and expeditious”, as well as Article 20(4)(c) guaranteeing the right of the Accused to be tried “without undue delay.”
10. The Chamber recalls that prior to the end of the previous session in July 2005, it had rejected a similar application for an adjournment brought by the same Defence and had directed Muvunyi’s Lead Counsel to consult with the President of the Tribunal. The Chamber also recalls that it was subsequent to that consultation that the judicial calendar for the next session was established. The Chamber notes that on the last day of the previous session, it rendered an oral ruling requiring the Defence to submit its Pre-Defence Brief and other elements of its case no later than one month before the commencement of the next session, or by 14 October 2005, pursuant to Rule 73 *ter*.¹
11. The Chamber further recalls that in the Defence submission of 13 July 2005 requesting an extension of time to file its motion for a judgement of acquittal pursuant to Rule 98 *bis*² and that of 6 September 2005 asking for a “continuance of time” to reply to the Prosecution’s response,³ the Defence made a very clear undertaking that the granting of an extension would not to delay the filing of its Pre-Defence Brief or the start of the Defence case.
12. The Chamber is aware of the impact on the Houston area of Hurricane Rita, but believes reasonable steps could have been taken to minimise the impact on the Defence Team’s preparations. Moreover, the Chamber is not persuaded that it is in the interests of justice to put the Tribunal’s schedule on hold in order to allow Lead Counsel to resolve matters of a personal and private nature, particularly when it is not clear how long such a process might take.

¹ Transcripts of 20 July 2005.

² *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, “Muvunyi’s Motion for Extension of Time to File Rule 98 *bis* Motion”, 13 July 2005, para. 9.

³ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, “Tharcisse Muvunyi’s Motion for Continuance of time to Respond to the Prosecutor’s Reply to Muvunyi’s Motion for a Judgement of Acquittal Pursuant to Rule 98 *bis*”, 6 September 2005, para. 5.

13. With respect to the Defence claim that it was unable to interview witnesses because they were on vacation in Europe during the months of July and August, the Chamber observes that adequate planning could have prevented such an outcome.
14. The Chamber notes that the Defence submissions regarding genocide case files in the custody of Belgian judicial authorities and the potential testimony of a former high level African government official are of no particular consequence to the Tribunal's scheduling as they are issues of internal organisation of the Defence. Furthermore, the Chamber notes that Rule 73 *ter* (E) allows the Defence to move the Chamber for reinstating the list of witnesses to be called after the start of the Defence case.
15. Finally, the Chamber reminds the Defence that the Tribunal is not a common law jurisdiction and that, pursuant to the Directive on the Assignment of Defence Counsel, Lead Counsel and Co-Counsel are each required to have at least ten years' relevant experience⁴ and each is deemed to be capable of representing the interests of the Accused in the absence of the other.⁵ Therefore, the Chamber finds it unacceptable that Co-Counsel would not be able to proceed with the defence of his client in the absence of Lead Counsel.

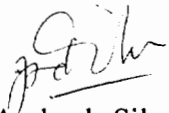
FOR THE FOREGOING REASONS,


THE TRIAL CHAMBER DENIES the Motion in its entirety;


REMINDS the Defence of its obligations pursuant to Rule 73 *ter*; and

ORDERS the Defence to commence the presentation of its case on 14 November 2005.

Arusha, 13 October 2005


Asoka de Silva
Presiding Judge


Flavia Lattanzi
Judge


Florence R. Arrey
Judge

[Seal of the Tribunal]



⁴ See Article 13(i).

⁵ See in particular Article 20(E)(i), which states as follows:

If Counsel is not available, Co-Counsel shall assume responsibility for carrying on the proceedings.