



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

**ICTR-98-41-T
10-02-2006
(26489-26487)**

**26489
S. M. M. M.**

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 10 February 2006

THE PROSECUTOR

v.

**Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA**

Case No. : ICTR-98-41-T

1 2006 FEB 10 P 12: 49
ICTR
SECRETARY GENERAL

**DECISION ON CERTIFICATION OF APPEAL FROM DECISION DENYING
REQUEST FOR FURTHER PARTICULARS OF THE INDICTMENT**

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

S. M. M. M.

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

26488

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

BEING SEIZED OF the Kabiligi "Application for Certification for Appeal Pursuant to Rule 73 (B) of the Trial Chamber's 'Decision on Request for Particulars of the Amended Indictment'", filed on 4 October 2005;

CONSIDERING the Prosecution Response, filed on 11 October 2005; the Defence Reply, filed on 14 October 2005; the Prosecution Further Response, filed on 17 October 2005; and the Defence Reply thereto, filed on 19 October 2005;

HEREBY DECIDES the application.

INTRODUCTION

1. On 27 September 2005, the Chamber denied a Kabiligi Defence motion that the Prosecution be ordered to remedy alleged deficiencies in the Indictment against the Accused by providing further particulars.¹ The issue now before the Chamber is whether leave to appeal this Decision should be granted.

2. As a preliminary matter, the Kabiligi Defence objects to consideration of the Prosecution's Further Response, as being both out of time and not permitted under the Rules. The Trial Chamber has discretion to consider late-filed or supplementary submissions and, in the present instance, chooses to do so.²

DELIBERATIONS

3. Leave to appeal a Trial Chamber decision may, pursuant to Rule 73 (B) of the Rules of Procedure and Evidence, be granted where it "involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings".

4. The Kabiligi Defence argues that the Decision affects the essential fairness of the trial and its outcome. Allowing the trial to proceed on the basis of the "vague charges set out in the Indictment" impairs the Defence's ability to meet and counter the Prosecution case.³ The Chamber's consideration of the Pre-trial Brief to determine whether the Defence had sufficient notice of certain material facts was improper.⁴ Immediate resolution by the Appeals Chamber would materially advance the proceedings by, if successful, requiring the Prosecution to clarify the scope of its case and, hence, reducing the length of the Defence case.⁵

¹ *Bagosora et al.*, Decision on Kabiligi Request for Particulars of the Amended Indictment (TC), 27 September 2005 ("the Decision").

² *Id.*; *Mpambara*, Decision on the Defence Preliminary Motion Challenging the Amended Indictment (TC), 30 May 2005, para. 1.

³ Motion, para. 9.

⁴ Motion, paras. 9, 12.

⁵ Motion, para. 10.

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5. The adequacy of an indictment is undoubtedly a question which affects the "fair and expeditious conduct of proceedings" as required by the first prong of Rule 73 (B). The basis for the certification request is that the lack of particulars impairs the Defence's ability to directly and succinctly address the Prosecution case. Even if the evidence admitted in relation to the allegedly vague portions of the Indictment is ultimately excluded by the Trial Chamber, the "fair and expeditious conduct of proceedings" would have been affected.

6. The issue in the present application is whether immediate resolution by the Appeals Chamber "may materially advance the proceedings". The application asserts that communications which supplement the Indictment, such as the Pre-trial Brief, should not have been considered by the Chamber, and that "the Indictment itself" must be rectified to cure its alleged vagueness.⁶ No jurisprudence is cited in support of this principle. On the contrary, the Appeals Chamber has declared unambiguously that an indictment which is insufficiently specific in respect of some material fact or allegation may be cured by other forms of disclosure to the Defence, including the Pre-trial Brief.⁷ Whether this is the case depends on the "the timing of such communications, the importance of the information to the ability of the Accused to prepare its defence, and the impact of the newly-disclosed material facts on the Prosecution's case are relevant".⁸ Factual determinations as to the weight of each of these factors are the primary responsibility of the Trial Chamber. Similarly, no reasonable basis has been raised showing how the Chamber committed any reversible error in relation to multiple counts arising from the same material facts, or the charge of superior responsibility.

7. In the Chamber's opinion, reference of the Decision to the Appeals Chamber in these circumstances would not materially advance the proceedings.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Kabiligi Defence application for certification.

Arusha, 10 February 2006


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁶ Application, pp. 5, 9.

⁷ *Ntakirutimana*, Judgement (AC), 13 December 2004, para. 27.

⁸ *Id.*