



**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: 12 April 2006

THE PROSECUTOR

vs.

THARCISSE MUVUNYI

ICTR-2000-55A-T

**DECISION ON THE PROSECUTOR'S MOTION REQUESTING A REVIEW OF
THE SCHEDULING ORDER AND FOR AN EXTENSION OF TIME TO FILE
CLOSING BRIEFS AND PRESENT ORAL ARGUMENTS**

Office of the Prosecutor

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

Counsel for the Accused Person

Mr William E. Taylor, Lead 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 the “Prosecutor’s Motion Requesting a Review of the Scheduling Order and for an Extension of Time to File Closing Briefs and Present Oral Arguments”, filed on 30 March 2006 (the “Motion”);

HAVING RECEIVED “Tharcisse Muvunyi’s Response to the Prosecutor’s Motion Requesting a Review of the Scheduling Order and for an Extension of Time to File Closing Briefs and Present Oral Arguments”, filed on 03 April 2006 (the “Response”);

RECALLING its Scheduling Order dated 29 March 2006;

NOTING the Registrar’s “Decision of Withdrawal of the Assignment of Mr. Martin Joly, Co-Counsel for the Accused Person Mr. Tharcisse Muvunyi” filed on 6 April 2006;

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) of the Rules on the basis of written submissions filed by the Parties.

SUBMISSIONS OF THE PARTIES

The Prosecution

1. The Prosecution requests the Chamber to review its Scheduling Order dated 29 March 2006 taking into consideration all of the procedural matters outlined during the Status Conference of 27 March 2006, and to revise the schedule such that the Parties will now be required to submit written briefs by 7 July 2006, and oral arguments on 14 and 15 August 2006.
2. The Prosecution submits that, in its view, the said Scheduling Order did not take the following factors into account: the submissions made by the Prosecution and by the Defence during the Status Conference; that the Parties will each be filing lengthy closing briefs that will need to be translated into French prior to the oral arguments; that in all cases before the Tribunal, the practice is to allow a period of four to six weeks following the presentation of evidence for the submission of closing briefs; and that the normal practice is to allow a period of at least four weeks after the submission of closing briefs before the presentation of oral arguments.
3. According to the Prosecution, because the Scheduling Order allows for only seven working days between the conclusion of the presentation of evidence and the submission of closing briefs, and only five working days between the submission of the closing briefs and the presentation of oral arguments, it is “grossly inadequate” as it does not take into account the “established existing obligations and commitments” that the Prosecution team has vis-à-vis another case before the Tribunal. In the Prosecution’s view, this is both prejudicial to it and contrary to the interests of justice.

4. The Prosecution alleges that it understands that there might be a need to complete this trial soon in order to enable one of the Judges sitting on this case to attend to other commitments outside the seat of the Tribunal. The Prosecution proposes that “arrangements could be put in place to enable the said Judge to return to the Tribunal as and when her attendance is required”. The Prosecution has attached to the Motion a comparative grid indicating the number of days allowed in other proceedings before the Tribunal for the filing of closing briefs and for the presentation of oral arguments.

The Defence

5. The Defence submits that while it does not necessarily concur with the reasons and rationale advanced by the Prosecution, it joins with the Prosecution in every respect to seek for relief. In addition, the Defence requests for more time to submit any final witnesses on rebuttal, rejoinder and mitigation, and also prays the Chamber to arrange for “a telephonic conference over scheduling issues.”
6. The Defence asserts that it is “at present without co-counsel” and that Muvunyi’s Lead Counsel is currently away from the Tribunal while the Legal Assistant is still in Arusha, but that it is “physically impossible” for them to work together in person on the final trial brief. The Defence also asserts that since the Chamber has not yet ruled on the Prosecution’s request to call witnesses in rebuttal, the Defence does not know if a rejoinder will be necessary.
7. The Defence further submits that, due to administrative reasons, the proper forms for any witnesses on mitigation have not yet been processed, and that this needs to be done at least a month in advance of bringing the witness here. Therefore, according to the Defence, the current Scheduling Order “is unrealistic and is a denial of justice and due process of the Defence.”

HAVING DELIBERATED

8. As a preliminary matter, the Chamber notes that the Rules do not provide for the review or reconsideration of interlocutory decisions “save with certification by the Trial Chamber” to the Appeals Chamber.¹ This is because the Tribunal has an interest in establishing the certainty and finality of its decisions and in encouraging the Parties to rely on these decisions without fearing that they could easily be altered.²
9. However, “the fact that the Rules do not so provide is not of itself determinative of the issue whether or not the power of reconsideration exists in ‘particular circumstances.’”³ The Appeals Chamber of the ICTY has held that a Chamber has the authority to reconsider and modify its prior decision if it is satisfied that there has been a change of circumstances, if it is persuaded that the decision was erroneous and has caused

¹ See Rule 72 (B) on Preliminary Motions and Rule 73 (B) on Motions. Compare to Rule 120, which provides for a review of the Judgement where a new fact has been discovered which was not known to the moving party at the time of the proceedings.

² *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, “Decision on the Prosecutor’s Motion for Reconsideration of the Trial Chamber’s ‘Decision on Prosecutor’s Motion for Leave to Vary the Witness List Pursuant to Rule 73 bis (E)’”, 15 June 2004, para. 7.

³ See the “Separate Opinion of Judge Mohammed Shahabuddeen” in *Barayagwiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Decision (Prosecutor’s Request for Review or Reconsideration), 31 March 2000, para. 3.

prejudice,⁴ or if new information emerges pointing to an error of law, a miscarriage of justice or an abuse of discretion.⁵ The Chamber will evaluate the submissions of the Parties in light of this jurisprudence.

10. The Chamber recalls all the issues it discussed with the Parties during the Status Conference held on Monday, 27 March 2006,⁶ subsequent to which it rendered the Scheduling Order of Wednesday, 29 March 2006.
11. The Chamber also recalls the provisions of Rule 86 (A) of the Rules dealing with closing arguments and notes that the Rule does not establish any definite time period between the conclusion of the presentation of evidence and the filing of final trial briefs. Each Trial Chamber, in the exercise of its inherent discretion and taking into consideration the specific circumstances of the case, may set the date as it deems appropriate. This Chamber is not bound by the practice of other Trial Chambers and as such the data presented in the Prosecution's comparative grid are of little relevance.
12. The Chamber further recalls Rule 86 (B), which requires that each party's final trial brief be filed with the Chamber "not later than five days prior to the day set for the presentation of that party's closing argument." Contrary to the arguments advanced by the Prosecution, the Scheduling Order clearly satisfied this requirement by establishing that the final trial briefs would be filed by 16 May 2006 while the closing arguments would be heard on 22 and 23 May 2006.
13. Subsequent to the filing of written submissions by the Parties requesting a review of the Scheduling Order, the Chamber was made aware of the Registrar's Decision withdrawing the assignment of the Co-Counsel for the Accused.⁷ The Chamber notes that in the Registrar's Decision, it is stated that in a letter dated 21 March 2006, Co-Counsel notified Lead Counsel of his inability to continue in this case, and Lead Counsel wrote to the Registrar about the same issue on 27 March 2006. Yet Lead Counsel chose not to explicitly inform the Chamber about this important matter either at the Status Conference of 27 March 2006 or before it issued its Scheduling Order on 29 March 2006.
14. Nonetheless, in light of the *ad hoc* Tribunals' jurisprudence, the Chamber considers that the withdrawal of the assignment of Co-Counsel constitutes "new information" which was previously unknown to it and therefore creates a "particular circumstance" warranting a review of the Scheduling Order.

FOR THE FOREGOING REASONS, THE CHAMBER

⁴ *The Prosecutor v. Mucic et al.*, Case No. IT-96-2-A bis, "Judgement on Sentence Appeal", 8 April 2003, para. 49.

⁵ *The Prosecutor v. Milosevic*, Case No. IT-02-54-T, "Decision on Prosecution Motion for Reconsideration Regarding Evidence of Defence Witnesses Mitar Balevic, Vladislav Jovanovic, Vukasin Andric, and Dobre Aleksovski and Decision Prorio Motu Reconsidering Admission of Exhibits" 17 May 2005, paras. 6-8; *The Prosecutor v. Galic*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004.; *The Prosecutor v. Galic*, Case No. IT-98-29-AR73, "Decision on Application by Prosecution for Leave to Appeal", 14 December 2001, para. 13.

⁶ See the Transcript of the Proceedings of 27 March 2006.

⁷ The Motion was filed on 30 March 2006, the Response on 3 April 2006, and the Registrar's "Decision on Withdrawal of the Assignment of Mr. Martin Joly, Co-Counsel for the Accused Person Mr. Tharcisse Muvunyi" was filed on 6 April 2006.

GRANTS the Motion in part by reviewing the Scheduling Order of 29 March 2006 and

HEREBY ORDERS that:

- (i) The Chamber will sit on 8 and 9 May 2006 to hear character witness(es), if any, that the Defence may wish to call, and any other witness(es) the Prosecutor may be allowed to call;
- (ii) The Parties shall file their final trial briefs not later than 9 June 2006;
- (iii) The Chamber will hear the Parties' closing arguments on 15 and 16 June 2006.

Arusha, 12 April 2006

Asoka de Silva
Presiding Judge

Flavia Lattanzi
Judge

Florence R. Arrey
Judge

[Seal of the Tribunal]