



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

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 8 March 2007

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-T

DECISION ON DEFENCE MOTION FOR JUDGEMENT OF ACQUITTAL

Rule 98 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niane

Defence Counsel:

Denis Turcotte
Benoît Henry

INTRODUCTION

1. Siméon Nchamihigo is currently charged with genocide pursuant to Article 2 of the Statute of the Tribunal, and extermination, murder, and other inhumane acts as crimes against humanity pursuant to Article 3 of the Statute.¹
2. The trial in this case began on 25 September 2006. Twenty-four Prosecution witnesses were heard by the Chamber over two trial sessions.² The Prosecution closed its case on 29 January 2007.
3. The Defence now seeks a judgement of acquittal on some paragraphs of the Indictment against the Accused pursuant to Rule 98*bis* of the Rules of Procedure and Evidence.³
4. The Prosecutor opposes the Motion and avers that, at the close of its case, it had established a *prima facie* case against the Accused relating to all counts.⁴

DISCUSSION

5. Rule 98 *bis* of the Rules provides:
If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused filed within seven days after the close of the Prosecution's case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.
6. Before dealing with the merits of the Defence Motion, the Chamber will address a preliminary matters related to the timeliness of some of the Defence submissions.

I. Preliminary Matter

7. In addition to its Motion filed on 5 February 2007, the Defence filed further submission two days later after the seven day deadline prescribed by Rule 98*bis*.⁵
8. In the Prosecutor's view, the Defence was not entitled to file an additional motion after the deadline prescribed by the Rules, without having permission from the Chamber to do so. Therefore, it moves the Chamber to dismiss the additional Defence motion.
9. The Chamber notes that the late filing made by the Defence did not cause any delay in the proceedings and that it did not cause any prejudice to the Prosecution which was able to respond thereto within a few days. In view of these circumstances and since the issue at stake could have a major impact on the trial of the Accused, the Chamber finds in the interests of justice and the rights of the Accused to a fair trial to take into consideration the Defence additional submission.

¹ Second Revised Amended Indictment, filed on 11 December 2006.

² The first trial session was held from 25 September 2006 to 20 October 2006. The second trial session started on 9 January 2007 and concluded on 29 January 2007.

³ *Requête en acquittement selon l'article 98 Bis du Règlement de procédure et de preuve*, filed on 5 February 2007. See also *Correction et ajout à la Requête en acquittement selon l'article 98 Bis du Règlement de procédure et de preuve déposée le 5 Février 2007*, filed on 7 February 2007.

⁴ Prosecutor's Consolidated Response to the Defence "Requête en acquittement selon l'article 98 Bis du Règlement de procédure et de preuve" and "Correction et ajout à la requête en acquittement selon l'article 98 Bis du Règlement de procédure et de preuve déposée le 5 février 2007", filed on 12 February 2007.

⁵ *Correction et ajout à la Requête en acquittement selon l'article 98 Bis du Règlement de procédure et de preuve déposée le 5 Février 2007*, filed on 7 February 2007.

II. On the Merits

10. The Defence seeks the removal of paragraphs 3, 7, 28, 57 and 39 of the Amended Indictment and the acquittal of the Accused in relation to the allegations made out in paragraphs 23, 25 and 51, 29 and 45, 37, 47 and 70 of the Amended Indictment.⁶ It asserts that these paragraphs are not supported by sufficient Prosecution evidence. In the Defence's view, when adjudicating as whether entering a judgement of acquittal under Rule 98bis, the Chamber should assess the insufficiency of the evidence not only in relation to each count of an indictment but also in relation to facts specified in each paragraphs.

11. Pursuant to the jurisprudence of the Appeals Chamber,⁷ and since then applied by the Trial Chambers of the Tribunal,⁸ the scope of Rule 98bis is delimited in relation to the determination of whether the evidence, if believed, is insufficient to sustain a conviction on one or more counts of the Indictment. The test applied is whether there is evidence upon which, if accepted, a reasonable trier of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question.⁹

12. Accordingly, where some evidence was adduced and that evidence, if believed, could be sufficient for a reasonable trier of fact to sustain, beyond reasonable doubt, a conviction on the particular count in question, a motion for a judgement of acquittal shall be denied. Conversely, where no evidence was adduced in relation to a count, such motion shall be granted.

13. Generally, the sufficiency of the evidence shall be determined without consideration of the reliability and credibility of the available evidence, leaving those matters to the final determination on the case. However, there is one situation in which the Chamber is obliged to consider somehow such matters: "it is where the Prosecution's case has completely broken down, either on its own presentation, or as a result of such fundamental questions being raised through cross-examination as to the reliability and credibility of witnesses that the Prosecution is left without a case".¹⁰ In this situation, a judgement of acquittal pursuant to Rule 98bis of the Rules should also be entered.

14. Finally, when adjudicating on a motion for judgement of acquittal, it must also be assumed that the Prosecution's evidence is entitled to credence unless the Chamber determines that no reasonable trier of fact could rely upon it.¹¹

15. In the present case, the Defence does not assert that the lack of evidence in support of certain paragraphs should result in acquittal on any count.¹²

⁶ See. Motion filed on 5 February 2007 and additional submission filed on 7 February 2007.

⁷ *Prosecutor v. Delalic et al.*, Judgment (AC), 20 February 2001, par. 434; *Prosecutor v. Jelusic*, Appeal Judgment (AC), 5 July 2001, par. 37.

⁸ *Prosecutor v. Semanza*, Decision on the Defence Motion for a Judgment of Acquittal in Respect of Laurent Semanza After Quashing the Counts Contained in the Third Amended Indictment (Article 98bis of the Rules of Procedure and Evidence) and Decision on the Prosecutor's Urgent Motion for Suspension of Time-Limit for Response to the Defence Motion for a Judgment of Acquittal (TC), 27 September 2001 ("*Semanza* Decision"), par. 14-15; *Prosecutor v. Kamuhanda*, Decision on Kamuhanda's Motion for Partial Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence (TC), 20 August 2002 ("*Kamuhanda* Decision"), par. 18; *Prosecutor v. Nyiramasuhuko et al.*, Decision On Defence Motions for Acquittal Under Rule 98bis (TC), 16 December 2004 ("*Nyiramasuhuko* Decision"), par. 70; *Prosecutor v. Bagosora et al.*, Decision on Motions for Judgment of Acquittal (TC), 2 February 2005 ("*Bagosora* Decision"), par. 6; *Prosecutor v. Muvunyi*, Decision on Tharcisse Muvunyi's Motion for Judgment of Acquittal Pursuant to Rule 98 bis (TC), 13 October 2005 ("*Muvunyi* Decision"), par. 35.

⁹ *Ibidem*.

¹⁰ *Semanza* Decision, par. 17; *Kamuhanda* Decision, par. 19; *Nyiramasuhuko* Decision, par. 76-77; *Muvunyi* Decision, par. 37; See also *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-T, Decision on Defence Motions for Acquittal, 6 April 2000 (TC), par. 28.

¹¹ *Bagosora* Decision, par. 10 ; *Muvunyi* Decision, par. 43.

16. However, according to the ordinary meaning of Rule 98bis¹³ and the established jurisprudence of this Tribunal, the Chamber must evaluate the Prosecution's evidence as a whole looking to the totality of the evidence.¹⁴ There is no need to look at each paragraph of the indictment. The evidence should be examined in relation to counts without also testing the sufficiency of evidence with respect to each paragraph of an indictment.¹⁵ Furthermore, an examination of the evidence in relation to counts charged is particularly appropriate in the present case, where many of the paragraphs of the Indictment are interdependent and purport to show that the Accused committed the alleged crimes. If, at this stage of the proceedings, the Chamber were to rule on the sufficiency of the evidence in relation to each material fact in particular paragraphs of the Indictment, it would be engaging in a substantive evidentiary evaluation, which is not warranted by Rule 98 bis.

17. Having reviewed the Prosecution evidence as a whole, the Chamber is also satisfied that the Prosecution has adduced sufficient evidence which, if believed, could sustain a conviction of the Accused on all the counts of the Amended Indictment (genocide, extermination, murder and other inhumane acts as crimes against humanity). While the Defence Motion therefore falls to be rejected, it does not follow that this will necessarily result in a conviction of the Accused on each count at the end of the trial. The assessment of the evidence in its totality at the end of the trial is different from the evaluation of its sufficiency in view of a judgement of acquittal under Rule 98bis of the Rules.

18. The Chamber further finds necessary to stress out that each accused is presumed innocent,¹⁶ and that accordingly, the Prosecution bears the onus of establishing the Accused's guilt beyond reasonable doubt.¹⁷

FOR THOSE REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 8 March 2007, done in English.

Dennis C. M. Byron Presiding Judge	With the consent and on behalf of Gberdao Gustave Kam Judge (absent at the time of the signature)	Robert Fremr Judge
[Seal of the Tribunal]		

¹² *The Prosecutor v. Jean Mpambara*, Decision on the Defence's Motion for Judgement of Acquittal (TC), 21 October 2005, para. 6; *The Prosecutor v. Protais Zigiranyirazo*, Decision on the Defence Motion pursuant to Rule 98bis (TC), 21 February 2007, para. 28.

¹³ The Rule refers to "counts" in relation with the possibility to enter a judgement of acquittal.

¹⁴ *Bagosora* Decision, par. 11 ; *Muvunyi* Decision, par. 40.

¹⁵ *Kamuhanda* Decision; *Nyiramasuhuko* Decision; *Bagosora* Decision, par. 8 ; *Muvunyi* Decision, par. 39.

¹⁶ Statute, Article 20(3).

¹⁷ See also Rule 87(A):

[...] A finding of guilt may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.