



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2064
HM

ICTR-01-63-T
18-4-2007
(2064 - 2062)

Or: ENG

TRIAL CHAMBER III

Before: Judge Dennis C. M. Hyon, presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 18 April 2007

2007 APR 18 12:41:00
JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR
v.
Siméon NCHAMIHIGO
Case No. ICTR-2001-63-T

DECISION FOLLOWING DEFENCE SUBMISSIONS ON COMPLIANCE WITH
RULE 67 OF THE RULES

Rules 46(A) and 67 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van, Senior
Madeleine Schwarz
Lloyd Strickland
Adama Niane
Marilize Keefer

Defence Counsel:

Denis Turcotte
Benoit Henry
Yann Evima Youma

1. The trial against Siméon Nchamihigo commenced on 25 September 2006. Twenty-four Prosecution witnesses were heard by the Chamber over two trial sessions.¹ The Prosecution closed its case on 29 January 2007.
2. Following a statement made by the Defence Counsel in open court concerning the intent to call a defence of alibi, the Chamber requested the Defence to clarify its position and to file written submissions on its compliance with Rule 67 of the Rules of Procedure and Evidence.² This Rule provides for the Defence to notify the Prosecutor of its intent to enter a defence of alibi, specifying the place(s) at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witness and any other evidence upon which the accused intends to rely to establish the alibi.
3. After considering the parties' submissions on this matter, the Chamber found that the Defence had failed to comply with the requirement set out by Rule 67(A)(ii) of the Rules concerning the notification of the defence of alibi.³ It ordered the Defence to comply immediately therewith and instructed the Defence to provide information as to the circumstances of its failure to comply with the Rule.⁴ The Chamber indeed sought additional information as to the circumstances of this breach, with a view of ascertaining whether the imposition of sanction is warranted under Rule 46(A) of the Rules.⁵
4. On 12 April 2007, the Defence filed its submissions in response to the Chamber's orders.⁶
5. The Chamber does not consider it necessary to discuss seriatim the points raised in these submissions, and will only address hereinafter some particular contentions made by the Defence.
6. The Chamber reaffirms, as the Defence asserts, that Rule 67 does not debar an accused from entering a defence of alibi when there is a failure to notify the Prosecutor of the intent to enter a defence of alibi and to provide notice information as set out by Rule

¹ 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. Twenty-four witnesses were heard over a period of 32 trial days.

² Sec T. 19 October 2006, p. 30, *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T ("Nchamihigo"), Scheduling Order (TC), 25 October 2006, para. 2 i).

³ *Nchamihigo*, Decision on Defence Compliance with Rule 67 of the Rules (TC), 5 April 2007, para. 9 ("Decision on Alibi").

⁴ *Id.*, Orders I to III.

⁵ *Id.*, para. 9. Rule 46(A) reads: "A Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. This provision is applicable *mutatis mutandis* to Counsel for the prosecution."

⁶ "Soumissions de la défense de Siméon Nchamihigo suite à « Decision on Defence Compliance with Rule 67 of the Rules », dated 11 April 2007 but filed on 12 April 2007 ("Defence Submissions").


67(A)(ii)(a).⁷ This conforms to Sub-Rule 67 (B) and the right of the accused to rely on defence of alibi.⁸

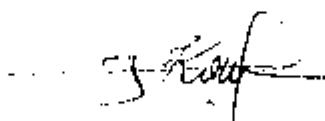
7. The Chamber, however, recalls its Decision that contrary to the Defence's contention,⁹ the express language of the Rule mandates "the Defence" to give notice of intent to enter a defence of alibi. As previously stated, disclosure of complete notice of alibi at the earliest stage of the proceedings notice enhances the fairness of the trial, including the right of the accused to be tried without undue delay, and the proper administration of justice.¹⁰ If a Defence Counsel receives instructions that his client claims to be at specific place(s) at the time of the alleged crime, then it is his professional obligation to accordingly file a notice of alibi as soon as practicable.

8. In its submissions, the Defence explains that, after its comments in open court on entering a defence of alibi without giving notice under Rule 67(A)(ii)(a) because its investigations were still ongoing,¹¹ the Chamber's omission to rule that those comments were inconsistent with that provision, contributed to its belief that its conduct was not a violation of the Rules.¹²

UNDER THESE CIRCUMSTANCES, THE CHAMBER DECIDES to take no action under Rule 46 and therefore that no warning under Rule 46 against the Defence Counsel is warranted.

Arusha, 18 April 2007, done in English.



Dennis C.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge

Robert Premr
Judge

[Seal of the Tribunal]





⁷ Decision on Alibi, para. 6.

⁸ Rule 67(B) reads: "Failure of the Defence to provide such notice under this Rule shall not limit the right of the accused to rely on the above defences".

⁹ Defence Submissions, paras. 14 and seq.

¹⁰ Decision on Alibi, para. 10.

¹¹ Defence Submissions, para. 7.

¹² Defence Submissions, paras. 5-6.



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