



ICTR-01-69-I
10-05-2007
(2167-2164)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2167
Mugemur

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 10 May 2007

The PROSECUTOR v. Hormisdas NSENGIMANA
Case No. ICTR-2001-69-I

JUDICIAL ARCHIVES
RECEIVED
2007 MAY 10 PM 14:22

**DECISION ON HORMISDAS NSENGIMANA'S MOTION FOR
RECONSIDERATION OF THE DECISION OF 26 APRIL 2007**

Office of the Prosecutor

Mr Wallace Kapaya
Mr Sylver Ntukamazina
Ms Charity Kagwi
Mr Ian Morley
Ms Gina Butler
Mr Iskandar Ismail
Mr Kristian Douglas
Ms Jane Mukangira

Defence Counsel

Mr Emmanuel Altit
Mr Rémi Maxas
Ms Anne Lardy

AMR

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the "*Requête de la défense de Nsengimana en reconsidération de la procédure fondée sur la version anglaise de la décision de la Chambre du 29 mars 2007 et subsidiairement en reconsidération de la décision de la chambre du 26 avril 2007*," filed on 30 April 2007 (the "Motion");

CONSIDERING the

- i. "Prosecutor's Response to '*Requête de la défense de Nsengimana en reconsidération de la procédure fondée sur la version anglaise de la décision de la Chambre du 29 mars 2007 et subsidiairement en reconsidération de la décision de la chambre du 26 avril 2007*'", filed on 3 May 2007 (the "Prosecution's Response");
- ii. "*Réplique de la Défense à la 'Prosecutor's Response to 'Requête de la défense de Nsengimana en reconsidération de la procédure fondée sur la version anglaise de la décision de la Chambre du 29 mars 2007 et subsidiairement en reconsidération de la décision de la chambre du 26 avril 2007'*", filed on 8 May 2007 (the "Defence Reply");

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 the written briefs of the Parties.

INTRODUCTION

1. On 26 April 2007, Trial Chamber II declared inadmissible a Defence motion for certification to appeal the 29 March 2007 Decision because it was time barred pursuant to Rule 73 (B) of the Rules. The Chamber added that no good cause had been demonstrated for the late filing.
2. On 27 April, a Further Appearance of the Accused was held in conformity with the 29 March 2007 Decision and the requirements of the Rules.

SUBMISSIONS

3. The Defence submits that it could not file its motion for certification to appeal the 29 March 2007 Decision on the basis of the French version of the said Decision whereas French is the working language of both the Defence and the Accused. The Defence further submits that, as the French version of the Decision was received on 23 April 2007, the Defence should have been entitled to file its certification motion until 30 April 2007.
4. The Defence alleges that upon receipt of the 29 March 2007 Decision, it enquired about the deadlines for filing certification motion and sent a provisional motion for certification on 5 April 2007. The Defence submits that on 10 April 2007, it was

informed that it would receive a French translation of the Decision as soon as possible. On 12 April 2007, it received a scheduling order setting the further appearance on 27 April 2007 whereas the French version of the Decision had not been received yet. The Defence alleges therefore that the rights of the Accused to use a language he understands have been violated and that the Chamber should declare null and void the proceedings based on the English version of the 29 March 2007 Decision.

5. Moreover, the Defence submits that the certification motion was filed on 5 April 2007 as evidenced by a return receipt annexed to the Motion and that according to case law,¹ certification motion must be filed within seven days from the 29 March 2007 Decision and not within six days. So, even if the Chamber were to consider that the Accused had to rely on the English version of the 29 March 2007 Decision, the Defence prays the Chamber to declare that the motion filed on 5 April 2007 was filed within the seven day time limit and thereby reconsider its Decision of 26 April 2007 on inadmissibility.
6. The Prosecution submits that this matter should be considered by Trial Chamber II as a Chamber may only reconsider its own decision. With respect to the filing of the certification motion by the Defence, the Prosecution relies on the Registry stamp of 10 April 2007 and adds that, had it been filed on 5 April 2007, it would still be out of time and no good cause was demonstrated for the late filing.
7. The Prosecution submits that reconsideration may be warranted when a new fact has been discovered, where new circumstances have arisen that affect the premise of the impugned decision or where a party has successfully shown an error of law or that the Chamber has abused its discretion and this led to an injustice.² The Prosecution concludes that none of these conditions are met.
8. The Defence replies that as the case was transferred to another Chamber after the motion had been filed, it does not object to the Prosecution's suggestion that the motion be heard by Trial Chamber II.
9. With respect to the Prosecution suggestion that the Defence should have filed a motion for extension of the time limit based on the need for a French version of the 29 March 2007 Decision, the Defence replies that it had been led to believe that the deadlines would only run from the filing of the said French version

HAVING DELIBERATED

10. As a preliminary matter, and after consultations with Trial Chamber I currently seized of the Nsengimana Case,³ it has been agreed that this Trial Chamber should remain seized of the current Motion which essentially prays the Chamber to reconsider its previous decision.
11. The Chamber recalls its jurisprudence on reconsideration:

¹ The Defence quotes from four decisions on motions for certification in the *Bagosora et al.* case.

² The Prosecution quotes from the *Zigiranyirazo* case.

³ Interoffice Memorandum, ICTR/PRES/025/07, 30 April 2007.

although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances.⁴

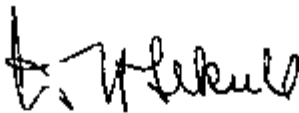
12. The Chamber notes that it has the inherent jurisdiction, to be exercised as its discretion, to reconsider an impugned decision, including but not limited to the following circumstances:

- i. Where the impugned decision was erroneous in law or constitute an abuse of discretion and for this reason a procedural irregularity has caused a failure of natural justice; or,
- ii. Where new material circumstances have arisen since the decision was issued.⁵

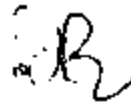
13. The Chamber considers that the Defence submissions do not allege any new material circumstances nor demonstrate that the Chamber committed an error in law or an abuse of its discretion. The Chamber further considers that the Defence merely repeats arguments already raised and disposed of in the impugned decision, which it reiterated orally during the further appearance of the Accused, following the amendment of the indictment, and to which the Chamber has responded on that occasion. The Defence has therefore failed to demonstrate the existence of any "particular circumstances" that might warrant a reconsideration of the Chamber's Decision.

**FOR THE ABOVE REASONS, THE TRIBUNAL,
DENIES the Motion.**

Arusha, 10 May 2007



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge

⁴ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Ex-Parte-Extremely Urgent Motion for Reconsideration of Trial Chamber II's Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte-Under Seal-Motion for Additional Protective Measures for Defence Witness WBNM, dated 17 June 2005 or, Subsidiarily, on Nyiramasuhuko's Strictly Confidential Ex-Parte-Under Seal-Motion for Additional protective Measures for Defence Witness WBNM (TC), 4 July 2005, para. 3, quoting *Bagosora et al.*, ICTR-98-41-T, Decision on 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 73bis (E)" (TC), 15 June 2004, para. 7.

⁵ *Barayagiza*, Decision (Prosecutor's Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, paras. 4-5; *Bagosora et al.*, Decision on Reconsideration of Order to reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11; *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003, para. 25.