



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T

14-06-2007

(24168-24163)

OR:
ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacunga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 14 June 2007

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

JUDICIAL RECORDS/ARCHIVE
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Case No. ICTR-99-50-T

DECISION ON JUSTIN MUGENZI'S MOTION ALLEGING
UNDUE DELAY AND SEEKING SEVERANCE

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Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

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INTRODUCTION

1. The Defence for Justin Mugenzi alleges a violation of Mr. Mugenzi's right to trial without undue delay, guaranteed by Article 20(4)(c) of the ICTR Statute.¹ In support of its argument, the Defence relies upon the legal arguments presented in Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial Without Undue Delay (the "Mugiraneza Motion").²
2. As a remedy for the alleged violation of his right to a trial without undue delay, Mr. Mugenzi urges the Chamber to sever his case under Rule 82 of the Rules of Procedure and Evidence.³ Mr. Mugenzi has previously requested severance, but the Chamber denied the request, stating its intention to remain "alive to the matter."⁴
3. Prosper Mugiraneza supports Mr. Mugenzi's allegation of undue delay and his request for severance, so long as severance of Mr. Mugenzi does not violate Mr. Mugiraneza's right to a trial without undue delay and does not prejudice him in any way.⁵
4. The Prosecution opposes the Motion, submitting: (i) that the issue is *res judicata*, and therefore barred; (ii) that it is time-barred under Rule 72(A); and (iii) that Mr. Mugenzi has not suffered any prejudice. In addition, the Prosecution argues that the Defence concerns about the health of one of the judges and the end date of the trial are speculative and unsupported by evidence.⁶
5. Mr. Mugiraneza submits that the Prosecution's argument based on the doctrine of *res judicata* is misplaced since no final judgment has been entered in the instant case.⁷

DISCUSSION

Preliminary Matters – Time-bar and Res judicata

6. The Prosecution submits that the present motion is barred by virtue of the doctrine of *res judicata* based on the 8 November 2002 Decision.⁸ The Chamber is not persuaded

¹ "Justin Mugenzi's Motion for Severance Under Rule 82", filed 28 March 2007, paras 2, 18 (The "Mugenzi Motion").

² "Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial Without Undue Delay", filed 11 December 2006, (the "Mugiraneza Motion").

³ Mugenzi Motion, paras 1-2, 20-25.

⁴ See *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-I, Decision on Justin Mugenzi's motion for stay of proceedings or in the alternative provisional release (Rule 65) and in addition severance (Rule 82(b)), 8 November 2002, para 43 (the "8 November 2002 Decision").

⁵ "Prosper Mugiraneza's response to Justin Mugenzi's Motion for Severance under Rule 82", filed 30 March 2007, para 4.

⁶ "Prosecutor's Response to Justin Mugenzi's Motion for Severance Under Rule 82", filed 3 April 2007 (the "Prosecution's Response").

⁷ "Prosper Mugiraneza's Reply to the Prosecutor's Response to Justin Mugenzi's Motion for Severance under Rule 82", filed 4 April 2007.

⁸ Prosecutor's Response, para 11.



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by this argument. The doctrine of *res judicata* – or more accurately under the circumstances, issue estoppel – does not bar the Chamber from considering the merits of a second motion alleging undue delay where the second motion alleges a new basis for undue delay.⁹ Mr. Mugenzi's previous motion was based on an allegation of undue delay during the pre-trial proceedings and the present motion alleges undue delay during the trial. Therefore, for the same reasons articulated by this Chamber in the Mugiraneza Decision,¹⁰ the Chamber determines that this issue is not barred as *res judicata*.

7. In addition, the Prosecution argues that the present motion is time-barred pursuant to Rule 72(A)(iii) of the Rules, which provides that a motion seeking a separate trial under Rule 82(B) must be "brought not later than thirty days after" disclosure by the Prosecution under Rule 66(A)(i). Rule 72(F) states that "[f]ailure to comply with the time limits prescribed in this Rule shall constitute a waiver of the rights. The Trial Chamber may, however, grant relief from the waiver upon showing of good cause."¹¹

8. The Chamber notes that the focus of Mr. Mugenzi's Motion is the alleged violation of his right to trial without undue delay. Severance is merely the requested remedy. Therefore, the Motion shall be considered as having been brought under Rule 73, which allows for motions at any time after the initial appearance of the accused.

Undue Delay

9. The Defence submits that Mr. Mugenzi has been denied his right to a trial without undue delay guaranteed by Article 20(4)(c) of the Statute, which provides, "In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: [...] to be tried without undue delay". In addition to the Statute, the Defence for Mr. Mugenzi incorporates the arguments set forth in the Mugiraneza Motion,¹² which relied, *inter alia*, on the jurisprudence of the *ad hoc* Tribunals, as well as Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR), comments issued by the Human Rights Committee interpreting the ICCPR,¹³ and jurisprudence of the European Court of Human Rights.¹⁴

10. In the Mugiraneza Decision, the Chamber acknowledged the binding nature of generally accepted human rights norms on the Tribunal, stating, "while the jurisprudence of the ECHR and HRC may be persuasive to the Tribunal, the Chamber considers that it should only have recourse to such authorities to the extent that the Tribunal's statutory instruments and jurisprudence are deficient."¹⁵

⁹ Mugiraneza Decision, paras 9-10.

¹⁰ Mugiraneza Decision, para 10.

¹¹ Prosecutor's Response, paras 4-8.

¹² Mugenzi Motion, para 18 (citing the Mugiraneza Motion, paras 5 to 7).

¹³ *Id.*, paras 5-6, 12-14, 25-32, 35.

¹⁴ Mugiraneza Motion, para 7 (citing *Bunkate v. Netherlands*, No. 26/1992/371/445 (ECHR 1993)).

¹⁵ Mugiraneza Decision, para 20.



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11. The Appeals Chamber has previously held that a determination of whether an Accused person's right to be tried without undue delay has been violated must necessarily include a consideration of, *inter alia*, the following factors:¹⁸

1. The length of the delay;
2. The complexity of the proceedings, such as the number of charges, the number of accused, the number of witnesses, the volume of evidence, the complexity of facts and law;
3. The conduct of the parties;
4. The conduct of the relevant authorities; and
5. The prejudice to the accused, if any.

(1) *The length of the delay*

12. The Defence notes that Mr. Mugenzi has been incarcerated since 6 April 1999 and was charged on 2 September 2002. His trial began on 6 November 2003 and the Prosecution finished presenting his evidence on 23 June 2005, after 178 days of trial.

13. The Defence estimates that the remaining Co-Accused will not complete presentation of their evidence until 2009.¹⁹ The Defence further speculates that one of the judges might choose to withdraw from this case and, if so, that this might have an effect on Mr. Mugenzi's right to a trial without undue delay.²⁰

14. When making a determination as to whether there has been undue delay, the Chamber will only consider any delay up to the present. The Chamber will not speculate on whether the Accused's right to trial without undue delay might be violated at a future date.²¹

15. The Chamber notes that Mr. Mugenzi is in his ninth year of incarceration. When analyzing undue delay, however, this Chamber has made clear that the reasonableness of a period of delay cannot be translated into a fixed length of time and is dependant on consideration of the other factors articulated by the Appeals Chamber.²²

¹⁸ *Prosecutor v. Bizimungu et al.*, Case no. ICTR-99-50-AR73, Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief (AC), 27 February 2004, p. 3.

¹⁹ Mugenzi Motion, paras 7-11.

²⁰ *Id.*, paras 14-17.

²¹ See Mugiraneza Decision, para 25.

²² See, e.g., *The Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Defence Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings (TC), 23 May 2000, para 68; *The Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defence Motion for the Provisional Release of the Accused (TC), 21 February 2001, para 11; *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial Without Undue Delay, 29 May 2007, para 27.



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(2) *The complexity of the proceedings*

16. The Defence for Mr. Mugenzi offers no additional submissions regarding the complexity of the proceedings, relying instead on the Mugiraneza Motion, which alleges that these proceedings are not complex.²³ This Chamber has already had the opportunity to consider the complexity of the proceedings in the Mugiraneza Decision, and has found that they are complex.²⁴

(3) *The conduct of the parties*

17. The Defence presents no additional evidence of delay caused by the Prosecution, but refers to and relies upon the relevant allegations in the Mugiraneza Motion. The Mugiraneza Motion alleged a lack of a "sense of urgency" on behalf of the Prosecution, delays in disclosure,²⁵ delays due to leadership vacancies,²⁶ and delays related to the request to amend the Indictment.²⁷

18. In the Mugiraneza Decision the Chamber rejected these arguments and found no delay attributable to the Prosecution.²⁸ For the same reasons these arguments are rejected here.

(4) *The conduct of the relevant authorities*

19. The Mugenzi Motion refers to a "chronic lack of court space"²⁹ and the Mugiraneza Motion describes shortages of *ad litem* judges and translation facilities,³⁰ delays due to the Security Council, the General Assembly, disagreements between the Prosecution and the Registry, and the amount of time allocated to the trial by the Tribunal President.³¹

20. The Chamber has already rejected these arguments, including the allegations of a lack of court space, in the Mugiraneza Decision.³² The Defence for Mr. Mugenzi has not adduced any more details and relies entirely on the Mugiraneza Motion. The Chamber therefore finds that Mugenzi has not raised any new arguments showing how the delay is attributable to the listed authorities. Accordingly, the arguments are rejected here as well.

²³ Mugiraneza Motion, paras 56-58.

²⁴ Mugiraneza Decision, paras 30-31.

²⁵ Mugiraneza Motion, paras 59-61.

²⁶ Mugiraneza Motion, paras 40-43.

²⁷ Mugiraneza Motion, para 60.

²⁸ , para 34.

²⁹ Mugenzi Motion, paras 13, 18.

³⁰ *Id.* paras 44-48.

³¹ Mugiraneza Motion, paras 10, 40-51, 64-65, 71.

³² Mugiraneza Decision, para 36.



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(5) The prejudice to the accused, if any

21. The Defence presents no arguments that Mr. Mugenzi has been prejudiced. The Mugiraneza Motion argued prejudice due to witnesses dying or their memories fading.³³ Mr. Mugiraneza's arguments regarding prejudice are specific to his own case and are not relevant to Mr. Mugenzi. Mr. Mugenzi fails to allege how he has been prejudiced.

Conclusion

22. The Defence has proposed severance of Mr. Mugenzi's case as a remedy for the alleged undue delay suffered by the Accused. The Chamber finds that Mr. Mugenzi has not been denied his right to a trial without undue delay. It is therefore unnecessary for the Chamber to consider whether severance is an appropriate remedy.

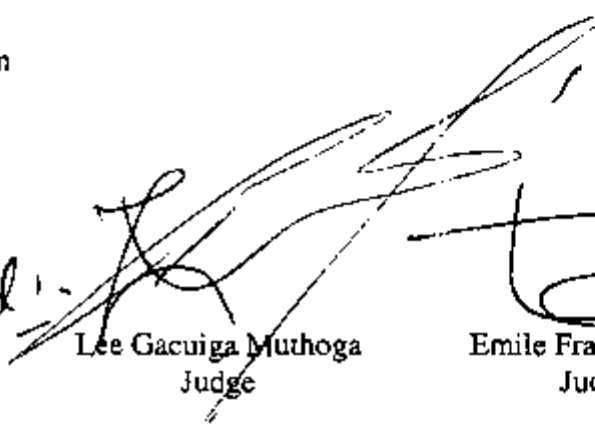
FOR THESE REASONS, the Chamber

DEPRIES the Defence Motion

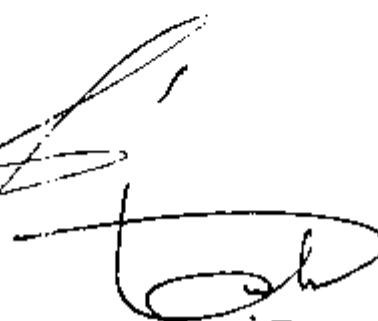
Arusha, 14 June 2007



Chalida Rachid Khan
Presiding Judge



Lee Gacuiya Muthoga
Judge



Emile Francis Short
Judge

[Seal of the Tribunal]



³³ Mugiraneza Motion, paras 78.