



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
23-07-2008
(28108-28106)

28108

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 23 July 2008

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

Case No. ICTR-99-50-T

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DECISION ON JUSTIN MUGENZI'S MOTION FOR RECONSIDERATION OF THE
CHAMBER'S FURTHER ORDERS
REGARDING THE FILING OF CLOSING BRIEFS

Office of the Prosecutor:

Mr. Paul Ng'arua
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Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Andrea Valdivia for Casimir Bizimungu
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi
Mr. Michel Croteau and Mr. Philippe Larochelle for Jérôme-Clément Bicomumpaka
Mr. Tom Moran and Ms. Cynthia Cline for Prosper Mugiraneza

INTRODUCTION

1. On 24 June 2008, the Chamber issued an Order regarding the filing of closing briefs in this case.¹ In the Order, the Chamber limited the number of pages for each Final Trial Brief filed to not more than three (300) hundred pages, including all annexes.

2. By Motion filed on 30 June 2006, the Defence for Justin Mugenzi ("Defence") requests the Chamber to reconsider the Order of 24 June 2008 (the "Impugned Decision") on the basis that the Chamber erred in law and abused its power.² The Defence for Bizimungu supports the Motion.³

3. The Prosecutor takes no objection to Justin Mugenzi's Motion but notes that, in the Impugned Decision, the Chamber has provided for the parties to make a request for a variation of the limit set by the Chamber, if the need arises.⁴

DISCUSSION

The Law on Reconsideration

4. The Chamber has an inherent power to reverse or revise a prior decision where new material circumstances have arisen that did not exist at the time of the original decision, or where the decision was erroneous and has caused prejudice or injustice to a party.⁵ The onus is on the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.⁶

Should the Chamber Reconsider the Impugned Decision?

5. The Defence submits that, in the present proceedings, matters have generally "proceeded by consensus" and that it is an abuse of power by the Chamber to proceed

¹ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T ("*Bizimungu et al.*"), Further Orders Regarding the Filing of Closing Briefs, 24 June 2008.

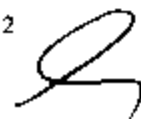
² *Bizimungu et al.*, "Justin Mugenzi's Motion for Reconsideration of the Chamber's Further Orders Regarding the Filing of Closing Briefs," filed 27 June 2008 ("Motion").

³ *Bizimungu et al.*, "Réponse et Argumentation du Dr. Casimir Bizimungu à la Requête Justin Mugenzi's Motion for Reconsideration of the Chamber's Further Orders Regarding the Filing of Closing Briefs," filed 2 July 2008.

⁴ *Bizimungu et al.*, "Prosecutor's Response to Justin Mugenzi's Motion for Reconsideration of the Chamber's Further Orders Regarding the Filing of Closing Briefs," filed 2 July 2008.

⁵ *Bizimungu et al.*, Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 6; *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera et al.*, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure, 31 October 2005, para. 3; *Karemera et al.*, Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

⁶ See *Prosecutor v. Nzirorera et al.*, Case No. ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, 10 October 2003, para 6.



other wise.⁷ The Defence asserts that “an order regarding the length of the Final Trial Briefs ...should only be made after the Chamber has heard the parties’ submissions....” The Defence argues that the Chamber’s power under Rule 54 “does not excuse the Chamber from the requirement, in these circumstances, to allow the parties to state their positions.”⁸

6. There has been no error of law, nor abuse of discretion on the part of the Chamber. Rule 54 provides that the Chamber may, at the request of either party, or *proprio motu*, issue such orders as may be necessary for the conduct of the trial. Article 19 (1) of the Statute of the Tribunal requires the Chamber to ensure that the trial is fair and expeditious, and that the proceedings are conducted in accordance with the Rules, with full respect for the rights of the accused and regard for the protection of victims and witnesses.

7. It is clearly within the reasonable exercise of the Chamber’s discretion under Rule 54, and consistent with Article 19 (1), for the Chamber to set a page limit for Final Trial Briefs.⁹ Furthermore, it is worth recalling that the Impugned Decision provides a means by which a party who is unable to comply with the directive may seek to exceed the prescribed page limit, if necessary.

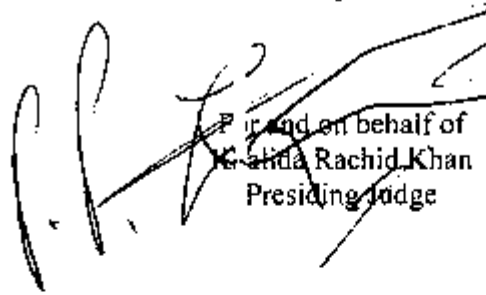
CONCLUSION

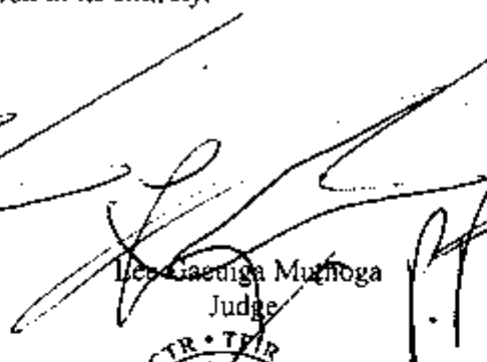
8. The Chamber considers that the test for reconsideration has not been met.

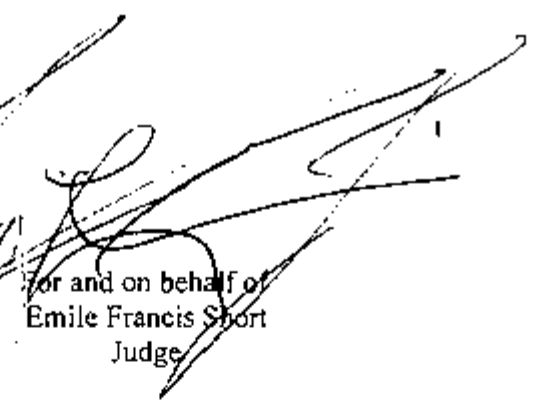
THE CHAMBER hereby;

DENIES the Defence Motion in its entirety.

Arusha, 23 July 2008


For and on behalf of
Ghada Rachid Khan
Presiding Judge


Jean Gacanga Muzigo
Judge


For and on behalf of
Emile Francis Short
Judge



⁷ Motion, paras. 7-12.

⁸ *Ibid.*, para 9.

⁹ See also *Prosecutor v. Nyiramasuhuko et al*, Joint Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008: (Though the Chamber is not bound by the practice in other Chambers, it is worth noting that Trial Chamber II recently issued an Order that included a set page limit for Final Trial Briefs); See also IT/184/Rev.2, Practice Direction on the Length of Briefs and Motions, 16 September 2005: (The ICTY Practice Direction stipulates that Final Trial Briefs shall not exceed 60,000 words).