



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-97-21-T
02-08-08
(2395-2392)

2395
PM

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 2 September 2008

JUDICIAL RECORDS SECTION
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The PROSECUTOR v. Shalom NTAHOBALI

Case No. ICTR-97-21-T

Joint Case No. ICTR-98-42-T

DECISION ON PROSECUTION MOTION FOR EXTENSION OF TIME

Office of the Prosecutor

Ms. Holo Makwaia
Ms. Adelaide Whest
Ms. Althea Alexis Windsor
Mr. Fergal Gaynor
Ms. Madeleine Schwarz
Mr. Cheikh Tidiane Mara
Ms. Astou Mbow, *Case Manager*
Mr. Lansana Dumbaya, *Case Manager*

Counsel for Ntahobali

Mr. Normand Marquis
Mr. Bertrand St-Arnaud

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

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

BEING SEIZED of the "Prosecutor's Request for an Extension of Time to Respond to the '*Requête de Arsène Shalom Ntahobali en autorisation de dépôt de documents*'", filed on 25 August 2008 (the "Motion");

CONSIDERING the:

- a) "*Réponse de Arsène Shalom Ntahobali à la requête du Procureur en extension de délais pour répondre à la requête de Ntahobali en autorisation de dépôt de documents*", filed on 25 August 2008 ("Ntahobali's Response");
- b) "Prosecutor's Reply to Ntahobali's Response to the Prosecution's Motion for an Extension of Time to Respond to the '*requête de Arsène Shalom Ntahobali en autorisation de dépôt de documents*'", filed on 26 August 2008 ("Prosecution Reply");
- c) "*Duplique de Ntahobali à la réplique du Procureur à la réponse de Ntahobali à la requête du Procureur en extension de délais pour répondre à la requête de Ntahobali en autorisation de dépôts de documents*", filed on 27 August 2008 ("Ntahobali's Rejoinder");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules") in particular Rule 73 *ter*;

NOW DECIDES the Motions pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs and on the oral submissions made by the Parties.

INTRODUCTION

1. On Thursday 21 August 2008, Ntahobali filed a Motion for admission of 36 documents into evidence. On the same day and on behalf of the Chamber, the Registry issued a memorandum instructing any responding Party to respond to the Motion within five days after receipt of the notification and that any reply should be filed five days from the receipt of the response(s), if any.

2. On Monday 25 August 2008, the Prosecution filed a Motion for an extension of time to respond to Ntahobali's Motion until Thursday 11 September 2008. On the same day and on behalf of the Chamber, the Registry issued the following memorandum: "Subject to any observation from the other Parties, the Chamber amends the timeframes for the Prosecution and any other Parties to respond to the said Motion. The Chamber instructs the Parties that any response should be filed by Monday 8 September 2008 at the latest. Any reply should be filed within five days of the responses."

3. On Wednesday 27 August 2008, an oral hearing was held during which the Defence for Ntahobali, the Defence for Nyiramasuhuko and the Prosecution addressed the Chamber with regard to the Prosecution Motion for extension of 25 August 2008.

SUBMISSIONS OF THE PARTIES

The Prosecution

4. The Prosecution requests the Chamber for an extension of time to respond to Ntahobali's motion until Thursday 11 September 2008. The Prosecution submits that 25 of the 36 documents subject matter of the Motion filed by Ntahobali on 21 August 2008 were provided to the Parties in Kinyarwanda language only and that the Prosecution is currently engaged in efforts to locate translations in either of the working languages of the Tribunal. The Prosecution further alleges that as of the filing of the Motion for an extension of time, it had only located French translations for 12 of the 25 documents in Kinyarwanda. It further argued that several of the untranslated Kinyarwanda documents are handwritten and difficult to decipher. The Prosecution stresses that it is imperative to have all Kinyarwandan documents translated for it to respond adequately to the Motion.

Ntahobali's Response

5. The Defence for Ntahobali objects to the Motion and submits that in-house translation of documents 2, 3, 8, 11, 13, 14, 16, 17, 18, 20, 22, 23, 24, 25, 27, 31, 32, 33 and 34 referred to in his Motion are available and are joined to his response. As for documents 6, 7, 10, 15 and 21, the Defence argues that the Prosecution has their translated version since it was the Prosecution itself which provided them to Ntahobali. The Defence further submits that documents 1, 4, 5, 9, 12, 19, 26, 28, 29, 30, 35 and 36 are either in French or in English. Finally, the Defence submits that if the Chamber grants the Motion for extension, the requested two weeks are unnecessary and two additional days would suffice for the Prosecution to file its response.

The Prosecution Reply

6. The Prosecution argues that Ntahobali could have submitted his Motion several months ago, upon first being informed that his Co-Accused Kanyabashi had decided not to testify in his own defence. Furthermore, while filing his Motion, the Defence for Ntahobali could have provided French translation of all documents in an effort to expedite the consideration of the Motion and finally the extension of one week does not freeze or slow down the progress of the trial.

Ntahobali's Rejoinder

7. The Defence for Ntahobali submits that Nsabimana and Kanyabashi have managed to file their respective response within the initial prescribed timeframes, yet they are by far less staffed than the Prosecution Team. The Defence further states that it is unacceptable that the Prosecution seeks more than five days to assess and analyze the same documents that it provided itself to the Parties, in the past. The Defence further argues that on many occasions, the Prosecution has disclosed Kinyarwandan documents for purpose of cross-examination without providing prior translation, which resulted in interruption of the proceedings. During the oral hearing of 27 August 2008, the Defence alleged that the Chamber failed to comply with the *audi alteram partem* principle when issuing its Directive of 25 August 2008 as it did not hear the other Parties submissions on the issue raised in the Prosecution Motion. The Defence for Nyiramasuhuko supported Ntahobali's arguments.



DELIBERATIONS

8. The Chamber recalls that when Ntahobali's Motion for admission of documents was filed, the Defence did not provide any translation of the documents in Kinyarwanda annexed to the Motion. In addition, the Motion did not indicate the translation status of these documents. The Chamber further notes that in response to the Prosecution Motion for extension, the Defence for Ntahobali supplied some translations and explanations as to the translation status of the documents annexed to its Motion for admission. The Chamber observes that had the Defence for Ntahobali attached those 19 translated documents to its Motion at the time of filing, it might have expedited the consideration of its Motion.

9. The Chamber underscores that each of the Parties is entitled to fully understand the content of the documents referred to in a motion. Translation into a working language of the Tribunal allows the Chamber and the Parties to participate in the proceedings. The Chamber is of the view that the issue of translation of documents in this motion was a good cause for extension of time in the circumstances of this motion. Under those circumstances, the Prosecution was justified in requesting additional time for translation and a directive was issued to this effect.

10. However, the Chamber found that the Prosecution request for an extension until 11 September 2008 was excessive considering the number of French translation that the Prosecution had already located at the time of the Motion.

11. The Chamber notes Ntahobali's submissions that Kanyabashi and Nsabimana responded to its Motion within the prescribed timeframes. The Chamber does not consider these filings made without translation as a justification for not providing documents in a working language.

12. The Chamber confirms that there was and there is still a justification for the extension of the timeframes. The Chamber therefore reiterates its Directive of 25 August 2008, and orders the Prosecution and any other Party to file its response by 8 September 2008 at the latest. The Chamber further instructs that any reply should be filed within five days from the filing of the responses.

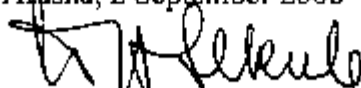
FOR THE ABOVE REASONS, THE TRIBUNAL


GRANTS the Motion in part;

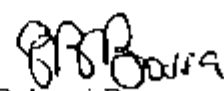
ORDERS the Prosecution to file its response by 8 September 2008 at the latest;

INSTRUCTS that any reply should be filed within five days from the filing of the responses.

Anusha, 2 September 2008


William H. Sekule
Presiding Judge


Arlette Ramaroson
Judge


Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

