

ICTR-07-91-PT
7-11-2008
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 7 November 2008

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-2007-91-PT

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON DEFENCE REQUEST CONCERNING THE DEADLINE FOR
RULE 72 PRELIMINARY EXCEPTIONS MOTION**

Rules 54 and 72 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Renifa Madenga
Abdoulaye Seye
Dennis Mabura

For the Accused

Allison Turner

[Signature]

INTRODUCTION

1. On 12 March 2008, the Prosecutor disclosed 361 pages of supporting materials to the Defence, pursuant to Rule 66 (A) (i). On 8 April 2008, the Prosecutor made further disclosures to the Defence, and filed a statement asserting that all material that constitutes supporting material for the purposes of Rule 66 (A) (i) had been disclosed to the Defence.¹

2. On 11 April 2008, the Defence filed a Motion submitting that the Prosecutor had not disclosed all Rule 66 (A) (i) supporting material.² The Motion further requests that the Chamber postpone the commencement date of the Rule 72 (A) delay until a determination is made on whether all Rule 66 (A) (i) materials have been disclosed by the Prosecution.³ On 16 April 2008, the Prosecutor responded to the Defence Motion. The Prosecutor, referring to the 8 April 2008 statement, where he asserts that his Rule 66 (A) (i) obligations had been fulfilled, submitted that the 30 day Rule 72 (A) limit should run from that date.⁴ The Defence submitted Motions on 11 April 2008, and again on 24 June 2008,⁵ reiterating the requests of the 11 April 2008 Motion.

3. On 1 October 2008, the Chamber ordered the Prosecutor to provide a Declaration clarifying the extent of his compliance with Rule 66 (A) (i),⁶ and declared that "the 30-day period provided for in Rule 72 (A) for submitting Preliminary Motions will run from: either (i) the date on which the Prosecutor's Declaration is filed; or (ii) to the extent that the Prosecutor must disclose further documents pursuant to this Decision, the date of the last disclosure, whichever is later."⁷

4. On 9 October 2008 the Prosecutor filed a Declaration stating that he had complied with Rule 66 (A) (i) of the Rules.⁸ Pursuant to this Declaration and in accordance with the Decision of 1 October 2008,⁹ the 30 day period for the filing of Defence Rule 72 (A) preliminary motions should commence on 9 October 2008.

5. A Pre-Trial Conference was held on 22 October 2008, during which the Defence requested clarification of the date on which the 30 day period, provided for in Rule 72 (A),

¹ *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-2007-91-PT, "Prosecutor's Reply to Addendum-Defence Response to Prosecutor's 'Clarifications on Documents Disclosed to the Defence on 12 March 2008'", filed 8 April 2008, paras. 2, 3.

² *Nshogoza*, "Urgent Defence Request Regarding the Commencement of the Rule 72 30-Day Delay", filed 11 April 2008, paras. 3, 4.

³ According to Rule 72 (A), any preliminary motion brought by the Defence must be brought no later than thirty days after the Prosecution has disclosed copies of all material and statements referred to in Rule 66 (A) (i).

⁴ *Nshogoza*, "Prosecutor's Response to 'Urgent Defence Request Regarding the Commencement of the Rule 72 30-Day Delay'", 16 April 2008, paras. 2, 3.

⁵ "Preliminary Pro Forma Submissions in Support of Preliminary Motions Pursuant to Rule 72 of the ICTR Rules of Procedure and Evidence", filed 11 April 2008; "Preliminary Motions Pursuant to Rule 72, and Alternative Motion under Rule 73 to Dismiss the Indictment", filed 24 June 2008.

⁶ *Nshogoza*, Decision on Defence Motions for Disclosure of Supporting Materials; and Clarification on Rule 72 30-Day Period, 1 October 2008 ("1 October Decision").

⁷ *Ibid.*

⁸ *Nshogoza*, "Prosecutor's Declaration and Disclosure Pursuant to Rules 66 and 75 of the Rules of Procedure and Evidence, Following Trial Chamber III's Order of 1 October 2008", 9 October 2008.

⁹ The 1 October 2008 Decision declared at p. 4 that "the 30-day period provided for in Rule 72 (A) for submitting Preliminary Motions will run from... (i) the date on which the Prosecutor's Declaration is filed".

would commence.¹⁰ The Chamber confirmed 9 October 2008, the date when the Prosecutor's Declaration was filed, as the date for commencement of the 30 day period under Rule 72 (A).¹¹

6. On 3 November 2008, the Defence filed a Motion requesting that the Chamber adjust this commencement date from 9 October 2008 to 14 or 15 October 2008, the dates on which the Defence asserts that the Accused and counsel received the Prosecutor's Declaration.¹²

7. The Prosecutor did not respond to the Motion.

DISCUSSION


8. It is clear from the Chamber's order of 1 October 2008, as well as the Chamber's oral decision at the status conference of 22 October 2008, that 9 October 2008 is the relevant date for the purposes of the 30 day period for filing preliminary motions under Rule 72 (A). However, Counsel for the Accused was formally appointed by the Registrar on 13 October 2008, and asserts that she only received the Prosecutor's Declaration after her appointment.


9. Recalling the Chamber's general power to make any orders that may be necessary for the preparation or conduct of a trial,¹³ the Chamber considers it appropriate, in light of the special circumstances in the present case, to extend the commencement date of the Rule 72 (A) 30 day period to 14 October 2008, which is the date that the Defence asserts the Accused received notice of the Prosecutor's Declaration.¹⁴

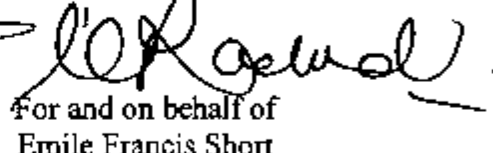
FOR THESE REASONS the Chamber,

ORDERS that the 30-day period provided for in Rule 72 (A) for submitting preliminary motions will run from 14 October 2008.

Arusha, 7 November 2008


Khalida Rachid Khaïr
Presiding Judge


Lee Gacunga Muthoga
Judge
[Seal of the Tribunal]


For and on behalf of
Emile Francis Short
Judge



¹⁰ Draft English Transcript dated 22 October 2008, p. 16.

¹¹ *Ibid.*

¹² "Defence Request Concerning the Deadline for Rule 72 Preliminary Exceptions Motion", 3 November 2008 ("Motion").

¹³ Under Rule 54, "At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders...as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

¹⁴ Motion, para. 4.