



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-00-55A-R65

29-01-2009

(430-428)

OR: ENG

TRIAL CHAMBER III

Before Judge: C. M. Dennis Byron, Presiding

Registrar: Adama Dieng

Date: 29 January 2009

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-R65

DECISION ON THE DEFENCE MOTION FOR PROVISIONAL RELEASE

Rule 65 of the Rules of Procedure and Evidence

Prosecution Counsel:
Mr. Charles Adeogun-Phillips
Mr. Ibukunolu Babajide

Defence Counsel:
Mr. William E. Taylor III
Ms. Abbe Jolles

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1. On 12 September 2006, Tharcisse Muvunyi was convicted on three out of five counts, namely genocide (Count 1), direct and public incitement to commit genocide (Count 3) and other inhumane acts (Count 5), and sentenced to 25 years imprisonment. On 29 August 2008, the Appeals Chamber reversed the conviction and acquitted Tharcisse Muvunyi on all counts, except in relation with the Gikore meeting, which was charged as a direct and public incitement to commit genocide. In that regard, the Appeals Chamber remitted the case for retrial, and ordered that the accused remains in custody pending the retrial. Subsequently, on 25 September 2008, the Appeals Chamber dismissed an application for provisional release, stating that it is no longer seized of the matter, the case having been remitted for retrial.¹
2. On 6 October 2008, the Defence filed before this Chamber a motion for provisional release pursuant to Rule 65 of the Rules of Procedure and Evidence, but limited itself to seeking a closed session hearing during which it was planning to make full disclosure of further details of the Motion. The Chamber has already denied that element of the motion.²
3. On 28 November 2008, the Defence orally submitted that it wishes the Chamber to consider releasing the Accused in a safe house in Tanzania under the control of the Tribunal.³ On 14 January 2009, the Accused renewed such submission and requested that the Chamber disposes of the matter.⁴

¹ Decision on Muvunyi's Request for Provisional Release (AC), 25 September 2008.

² T. 14 January 2009, pp. 5-7.

³ T. 28 November 2008, pp. 7-8.

I also have before the Court a motion for provisional release, and I suggest to the Court that the motion for provisional release should be granted. The fact of the matter is, as I have been told by the people from the registrar's office, there are safe house provisions that the Court can indulge in and can limit the incarceration time of my client based on those safe house provisions.

It appears to me that, based on the status of this case and the fact that a third of whatever possible sentence – even if the facts weren't favourable to the Prosecution – has been served; and the fact that my client is virtually no – is no flight risk; and the fact that I am told that the security at the safe houses is adequate to ensure the safety of not only the defendant, which is paramount in my mind, but also the citizens of Tanzania – if that be the case, that his release to a safe house in the – in the interim, until all these matters to include this motion for judgement based on due process violations, if that be filed, and the retrial, if that is something that can – that will proceed in a timely fashion.

The fact of the matter is we should stop the bleeding right now, and I think the Court should favourably consider his motion for provisional release and allow the matter to be – to be screened or approved by the local authorities, if that be the case, through the registrar's office. And it seems to me that the Court could grant a provisional release with that one proviso, or proviso, that the local authorities not object to it.

And so what I'm asking the Court to do is to clear the decks of all matters that I know are pending, is to rule that the defendant be released to a safe house in this jurisdiction and that we see whether or not any further motions are appropriate and can be ruled on after the providing – after the seven-day period has passed and the Prosecutor has taken his position officially in relation to the retrial.

⁴ T. 14 January 2009, p. 14: "As you would remember, my lead counsel revisited that motion for provisional release, and he made a new proposal. He said that he was not yet sure of the country to which I may go if I were provisionally released, but he said that he had spoken with someone of the registry. And that person told him that there was something called 'safe house' – safe house belonging to the Tribunal. And my lead

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4. During the same hearing on 14 January 2009, the Prosecutor renewed that he does not object to the provisional release as far as the Accused would be in a safe house under the control of the Tribunal.⁵


5. The Chamber recalls that the retrial was scheduled for 12 January 2009, and that Defence Counsel failed to appear before the Chamber while seeking the postponement of the commencement of the retrial until March 2009. The Chamber will reschedule the commencement of the retrial in due course. In addition, the Chamber considers that in view of the severity of the remaining charge, continued detention is not disproportional and required by the interest of justice, although Tharcisse Muvunyi has been in detention for eight years and that there is no risk that he will flee. The Chamber is therefore ready to start the proceedings. In those circumstances, the Motion falls to be dismissed.

FOR THOSE REASONS,

THE CHAMBER

DENIES the Defence Motion for Provisional Release.

Arusha, 29 January 2009, done in English.


C.M. Dennis Byron
Presiding Judge



counsel requested that I be transferred to a safe house, wherein I will stay during the period of provisional release.”

⁵ T. 14 January 2009, p. 16: “Going to the merits of the representations that have been made by the Accused in his case, Your Honour, as far as we’re concerned we have no strong objections to him being granted provisional release based on the status of things at the moment, but with conditions – with conditions, Your Honour. And some of the conditions he, himself, has alluded to. If Your Honour is minded [...] to grant provisional release, certainly, we could explore the possibility of him being kept in a safe house if that would make all the difference. So we don’t have any material objections to that as far as we’re concerned, Your Honour. I’m grateful.”