



ICTR-99-54-T  
25-02-2009  
(343-340)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

343  
PM

OR: ENG

**TRIAL CHAMBER II**

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

Registrar: Mr. Adama Dieng

Date: 25 February 2009

**The PROSECUTOR**

v.

**Augustin NGIRABATWARE**

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVE  
RECEIVED  
1 2009 FEB 25 11 03 AM

---

**DECISION ON DEFENCE MOTION TO VACATE TRIAL DATE OF 4 MAY 2009**

---

**Office of the Prosecutor**

Mr. Wallace Kapaya  
Mr. Patrick Gabaake  
Mr. Brian Wallace  
Mr. Iskander Ismail

**Counsel for Ngirabatware**

Mr. David C. Thomas

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

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

**BEING SEIZED** of the "Defence Motion To Vacate Trial Date Of May 4, 2009", filed on 2 February 2009 ("Ngirabatware's Motion");

**CONSIDERING** the "Prosecutor's Response to the Defence Motion to Vacate Trial Date of May 4, 2009", filed on 6 February 2009 ("Prosecution's Response");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

**NOW DECIDES** the Motion pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs filed by the Parties.

### **SUBMISSIONS OF THE PARTIES**

#### ***Ngirabatware's Motion***

1. The Defence for Ngirabatware moves the Chamber for an order to vacate the trial date of 4 May 2009. The Defence submits that in its 29 January 2008 Decision on "The Prosecutor's Motion for Leave To Amend the Indictment,"<sup>1</sup> the Chamber found that the proposed Amended Indictment contained 54 new charges which were not part of the original indictment and that the Prosecution did not act with due diligence in this regard. The Trial Chamber further stated through means of an Interoffice Memorandum from the President of the Tribunal dated 28 January 2009, that the trial start date was set for May 2009. The Defence submits that this topic was not broached by either party and was not necessary to the 29 January 2008 Decision.
2. The Defence affirms that the Accused has the right to a speedy trial, but emphasises that the trial must also be fair. In this vein, the Defence affirms that it is not possible for it to be prepared for trial by 4 May 2009.
3. The events dealt with in this case occurred 15 years ago and the Prosecution has been preparing its case for approximately 13 years, as is clear from the disclosure materials which date as far back as 1996. Consequently it is both a disparity and an injustice that the Defence has been given just three months to prepare to meet a case that has been 13 years in the making.
4. Counsel for the Accused was appointed a mere two months ago and to-date neither an investigator nor legal assistant has been appointed. The Defence team is composed of a Lead Counsel, who himself has only consulted with the Accused on two days. The Accused is in custody and has no incentive to delay the trial unnecessarily. The interest of the Accused lies in his right to a fair trial.

<sup>1</sup> *Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-T, Decision on the Prosecutor's Motion for Leave to Amend the Indictment, 29 January 2009.

5. This case is to be one of the final cases brought before the Tribunal, but this does not justify a rushed judgement as Ngirabatware faces charges of genocide and a possible life sentence, and is therefore entitled to due process.

6. The concept of procedural fairness is paramount in international criminal trials; a concept which includes such fundamental guarantees as a right to adequate time to prepare for trial.<sup>2</sup> The principle of equality of arms is a component of the right to a fair and expeditious trial, as it ensures that neither party is put at a disadvantage.<sup>3</sup> The Accused is entitled to a relatively proportional time to prepare for trial, compared to that of the Prosecution,<sup>4</sup> and the work of the investigators is an integral part of the preparation of the Defence.<sup>5</sup>

### **Prosecution's Response**

7. The Prosecution opposes Ngirabatware's Motion and asserts that it is ready for the trial in this matter to commence on the date set or any other date deemed appropriate by the Trial Chamber.

8. The Appeals Chamber has previously stated that a Trial Chamber should "balance the need for the accused to have adequate time for the preparation of his case and the need for an expeditious trial."<sup>6</sup>

9. The Prosecution rejects the Defence contention that the Accused be entitled to time that is relatively proportional to that of the Prosecution to allow it to prepare Ngirabatware's Defence. It submits that the Accused evaded arrest and was a fugitive from justice for many years after the original indictment was issued and consequently was the cause of the delay in the commencement of the trial against him. The Prosecution argues that Ngirabatware should not be entitled to that "proportional" amount of time to prepare for trial. The case cited in support of the contention that a proportional amount of time be granted relates to balancing the time allowed for the preparation and presentation of the defence case against the time taken to present the prosecution case and consequently is not relevant in this context.<sup>7</sup>

### **DELIBERATIONS**

10. The determination of a date for the commencement of trial is a matter for the general administration of the Tribunal and its judicial calendar. In setting the judicial calendar, the Tribunal evaluates priorities taking into account, *inter alia*, the rights of an accused to have a

<sup>2</sup> Referring to *Prosecutor v. Bizimunga [sic] et al.*, Case No. ICTR-99-50-T, Decision on Defence Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges, 2 September 2005, para. 20 (Paragraph 7 of the Motion).

<sup>3</sup> Referring to *Prosecutor v. Kayishema & Ruzindana*, Case No. ICTR-95-1-A, Judgement, 1 June 2001, para. 69; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1-A-T, Judgement, 7 June 2001, para. 14; Article 19 (1) of the Statute; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, Decision on the Continuance of the Trial, 14 September 2005, para. 3 (Paragraphs 8, 9 and 10 of the Motion).

<sup>4</sup> Referring to *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals Pursuant to Rule 15 bis (D), 20 April 2007, para. 28 (Paragraph 11 of the Motion).

<sup>5</sup> Referring to *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, Decision on the Defence Motion to Permit Investigators to Attend Closed Sessions, 18 August 2005, para. 8 (Paragraph 12 of the Motion).

<sup>6</sup> Referring to *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-AP73, Decision on Interlocutory Appeal by *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case (AC), 20 January 2004, para. 8 (Paragraph 2 of the Prosecution's Response).

<sup>7</sup> Referring to *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals Pursuant to Rule 15bis (D) (AC), 20 April 2007 (Paragraph 6 of the Prosecution's Response).

fair trial within a reasonable time, and the availability of Tribunal facilities.<sup>8</sup> Pursuant to Article 19(1) of the Statute, it must ensure that a trial is fair and expeditious while respecting the rights of the accused. Furthermore, the Chamber recalls the Appeals Chamber jurisprudence that, on the preparation and presentation of the Defence case, the Trial Chamber must "balance the need for the accused to have adequate time for the preparation of his case and the need for an expeditious trial."<sup>9</sup> In arriving at a decision regarding the scheduling of the trial, the Chamber considers all the relevant factors and appropriate concerns, and then employs its discretion.<sup>10</sup>

11. The Chamber observes that Defence investigators play an integral role on the Defence team.<sup>11</sup> During the Status Conference on 9 February 2009, it was disclosed that an investigator and a legal assistant had already been appointed for Ngirabatware and that intervention by Lead Counsel was necessary before a Co-Counsel could be appointed.<sup>12</sup> The Chamber expects that the staffing position of the Defence team will be addressed and completed in a timely manner.

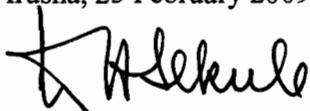
12. Under the circumstances, the Chamber considers that there is no justification to vacate the scheduled trial date of 4 May 2009. However, due to scheduling issues, the trial proceedings shall commence on 18 May 2009.

**FOR THE ABOVE REASONS, THE TRIBUNAL**

**DENIES** the Motion in its entirety and,

**ORDERS** that the trial shall commence on 18 May 2009.

Arusha, 25 February 2009



William H. Sekule  
Presiding Judge



Arlette Ramaroso  
Judge



Solomy Balungi Bossa  
Judge



[Seal of the Tribunal]

<sup>8</sup> *Prosecutor v. Hategekimana*, Case No. ICTR-00-55-I, Decision on Defence Motion for the Continuation of Proceedings before the Tribunal, 5 November 2007, para. 6.

<sup>9</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, Decision on the Continuance of Trial, 14 September 2005, para. 3, citing *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-AP73, Decision on Interlocutory Appeal by the *Amici Curiae* against the Trial chamber Order Concerning the Presentation and Preparation of the Defence Case (AC), 20 January 2004, para. 8.

<sup>10</sup> *Idem* paras. 16-17.

<sup>11</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-PT, Decision on the Defence Motion to Permit Investigators to Attend Closed Sessions, 18 August 2005, para. 8.

<sup>12</sup> Status Conference, Daily Case Minutes, 9 February 2009, para. 1 (d).

