

ICTR-07-91-T
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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
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 4 March 2009

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JUDICIAL RECORDS/ARCHIVES
UNICTR

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-T

**DECISION ON DEFENCE MOTION FOR RECONSIDERATION
OF THE CHAMBER'S DECISION ON MOTION FOR
POSTPONEMENT OF DEFENCE CASE**

Rules 54 and 73 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Paul Ng'aura
Abdoulaye Seye
Dennis Mabura
Marie Ka

For the Accused:

Allison Turner

INTRODUCTION

1. By way of motion filed on 20 February 2009, the Defence sought to postpone the commencement of the Defence case by one week because the Prosecutor's case "lasted nearly two (2) weeks rather than the four days originally scheduled."¹ On 26 February 2009, the Chamber issued a decision denying the Defence motion.²

2. The Defence now seeks reconsideration of the Chamber's 26 February 2009 Decision denying the Defence request for postponement of its case ("the Impugned Decision").³

DISCUSSION

Law on Reconsideration

3. Though reconsideration is not expressly provided for in the Statute or the Rules, the Trial 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 or an abuse of discretion and has caused prejudice or injustice to a party.⁴ Further, it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.⁵

Does the Impugned Decision Warrant Reconsideration?

4. According to the Scheduling Order of 11 December 2008, the Prosecutor's case was to run from 9 February 2009 to 13 February 2009, and the Defence case was to run from 9 March to 13 March 2009.⁶ However, the Prosecutor's case, including cross-examination, took eight trial days rather than four trial days as originally envisioned.

¹ *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-T, "Preliminary List of Defence Witnesses and Motion for One-Week Postponement of Defence Case," filed 20 February 2009, para. 2.

² *Nshogoza*, Decision on Defence Motion for Postponement of Defence Case, 26 February 2009.

³ *Nshogoza*, "Defence Request for Reconsideration of the 'Decision on Defence Motion for Postponement of the Defence Case' and Request to Postpone the Filing of the Pre-Defence Brief," filed 2 March 2009 ("Motion").

⁴ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-AR73.14, Decision on Mathieu Ngirumpatse's Appeal from the Trial Chamber Decision on 17 September 2008 ("Karemera AC Decision"), para. 13; *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, 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; *Karemera et al.*, Case No. ICTR-98-44-T, 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).

⁵ 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.

⁶ *Nshogoza*, Scheduling Order, 11 December 2008.

5. The Defence submits that the new material circumstance that has arisen to warrant reconsideration of the Impugned Decision is that the Defence received written confirmation for its six-day work programme in Rwanda.⁷

6. In addition, the Defence makes a number of new submissions regarding the need for more time. The Defence submits that it has not only to meet with witnesses in Rwanda, and conduct further investigations, but also has "a full week's worth of preparations that need to be completed in Arusha before the Defence can begin presenting its case."⁸ According to the Defence, this includes meeting with staff from the Office of the Prosecutor, completing investigations in Arusha, obtaining a statement pursuant to Rule 92 *bis*, preparing the Accused for his testimony, preparing witness lists, preparing the pre-Defence brief, and preparing witnesses who arrive in Arusha to give testimony.⁹

7. The Defence asserts that the effect of the Impugned Decision is to force the Accused to choose between having his counsel undertake preparations in Rwanda and completing the remaining work in Arusha. Further, the Defence submits that at the larger genocide trials before this Tribunal, Defence teams are given months to conduct further investigations and prepare the Defence case after the Prosecution case closes.¹⁰

8. According to the Defence, the Impugned Decision also sets a dangerous precedent because the "defence team is being punished for the [P]rosecution taking double its estimated time to present its witnesses." Thus, the Defence has less time to prepare its case, which, the Defence submits, raises fundamental issues of fairness.¹¹

9. The Chamber recalls that it can reconsider its 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 or an abuse of discretion. The Chamber does not consider that the approval of a work programme for the Defence amounts to a new material circumstance warranting reconsideration of the Impugned Decision. Nor has the Defence demonstrated an abuse of law or error of discretion.

10. The Chamber is mindful of the Accused's right to a fair and expeditious hearing in accordance with Article 19 of the Statute, and the Accused's right under Article 20 (4) (b) to have adequate time and facilities to prepare his defence. The Chamber does not consider that the scheduling of the Defence case, nor any of the matters raised in paragraph seven of the Motion amounts to a violation of the Accused's rights under Articles 19 and 20 of the Statute.¹² Further, at the Pre-Trial Conference of 30 October 2008, the Chamber granted the Defence's request for six to eight weeks to investigate and prepare for trial, and moved the proposed trial date from 23 November 2008 to 2 February 2009.¹³ Subsequently, the trial was scheduled to commence on 9 February 2009.¹⁴ As a result, the Defence was given an

⁷ Motion, para. 4.

⁸ Motion, para. 7.

⁹ Motion, para. 7.

¹⁰ Motion para. 10.

¹¹ Motion, para. 13.

¹² In paragraph 7 of the Motion, the Defence submits that it needs time to carry out various tasks, such as taking a 92 *bis* statement, preparing the Accused to testify, and the preparation of witnesses.

¹³ Draft T. 30 October, p. 5.

¹⁴ *Nshogoza*, Scheduling Order, 10 December 2008.

additional fourteen weeks to prepare its case. This is six to eight weeks more than the amount of time the Defence sought for the investigation and preparation of its case. The Chamber therefore considers that the Accused has been given adequate time and facilities to prepare his defence.

11. Regarding the Defence assertion that it is normal to have several months delay between the Prosecution case and the Defence case, the Chamber notes that many cases involving allegations of contempt of the Tribunal cases before the International Criminal Tribunal for the former Yugoslavia lasted between one day and four days. In the longer contempt of the Tribunal cases there appears to have been no break between the hearing of the Prosecutor's case and the commencement of the Defence case.¹⁵ As noted in the Impugned Decision, the Chamber took into account many factors in scheduling the trial. In the 11 December Scheduling Order, the Chamber took note of the Defence *ex parte* letter to the Chamber dated 1 December 2008 in which the Defence requested a four week delay between the Prosecution case and the Defence case. However, the time allotted between the Prosecution case and the Defence case was not based on the Defence *ex parte* letter as the Defence seems to suggest.¹⁶

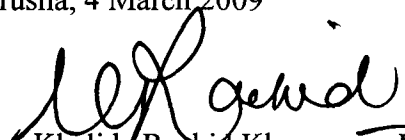
12. The Defence has filed a list of twenty-two witnesses that it intends to call to give oral testimony, which includes detailed summaries of the facts on which each of those witnesses will testify. Therefore, as evidenced by the detailed witness summaries, and taking into account the number of months which have passed since the time Defence Counsel was formally assigned in October 2008, the Chamber considers that it has given full respect to the Accused's right to adequately prepare his defence. After the commencement of the Defence case, should the Defence still need more time to conduct further investigations, the Chamber will, in the interests of justice, consider the merits of any such request at that time.

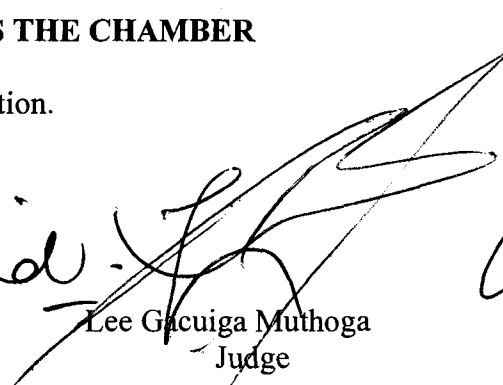
13. The Chamber finds that there has been no error of law or abuse of discretion that has caused prejudice or injustice to the Accused, nor is there a new material circumstance warranting reconsideration of the Impugned Decision.

FOR THESE REASONS THE CHAMBER

DENIES the Defence Motion.

Arusha, 4 March 2009


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Aydin Sefa Akay
Judge



¹⁵ *Prosecutor v. Simic et al*, Case No IT-95-9-R77, Judgement in the Matter of Contempt Allegations Against an Accused and His Counsel, para. 15; *Prosecutor v. Tadic*, Case No. IT-94-A-R77, Judgement on Allegation Against Prior Counsel Milan Vujin, para 11.

¹⁶ Motion, paras. 2, 9.