



ICTR-98-42-T
05 -- 03 - 2009
(13292 - 13287)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

13292
mump

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 5 March 2009

The PROSECUTOR v. Pauline NYIRAMASUHUKE & Arsène Shalom NTAHOBALI

Case No. ICTR-97-21-T

The PROSECUTOR v Sylvain NSABIMANA & Alphonse NTEZIRYAYO

Case No. ICTR-97-29A&B-T

The PROSECUTOR v Élie NDAYAMBAJE

Case No. ICTR-96-8-T

Joint Case No. ICTR-98-42-T

DECISION ON ORAL MOTIONS BY NYIRAMASUHUKE, NDAYAMBAJE, NSABIMANA, NTEZIRYAYO, NTAHOBALI AND THE PROSECUTION FOR RECONSIDERATION OF THE TIMEFRAMES OF ORAL SUBMISSIONS SET IN THE 29 AUGUST 2008 DECISION AND TO FIX THE DURATION OF ORAL SUBMISSIONS AND SCHEDULING ORDER

Office of the Prosecutor

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

Counsel for Ndayambaje

Mr. Pierre Boulé
Mr. Claver Sindayigaya

Counsel for Nyiramasuhuko

Ms. Nicole Bergevin
Mr. Guy Poupart

Counsel for Ntahobali

Mr. Normand Marquis
Ms. Mylène Dimitri

Counsel for Nsabimana

Ms. Josette Kadji
Mr. Pierre Tientcheu Weledji

Counsel for Nteziryayo

Mr. Frédéric Titinga Pacere
Mr. Ob'wamwa Otachi

JUDICIAL RECORDS/ARCHIVES
1 2009 MAR - 5 10 3: 20

Handwritten signature

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 oral motions by the Defence of Pauline Nyiramasuhuko, Élie Ndayambaje, Sylvain Nsabimana, Alphonse Nteziryayo, Arsène Shalom Ntahobali and the Prosecution for reconsideration of the timeframes of oral submissions and to fix the duration of oral submissions, argued on 25 February 2009;

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.

INTRODUCTION

1. On 2 July 2008, the Chamber ordered pursuant to Rule 86 of the Rules, that the respective closing arguments shall be held no later than 30 days after the filing of the closing briefs.¹ On 4 July 2008, all Parties submitted oral motions requesting the Chamber to reconsider the Scheduling Order of 2 July 2008. On 29 August 2008, the Chamber extended the timeframe between closing briefs and closing arguments to 45 days.² On 25 February 2009, the Defence of Pauline Nyiramasuhuko, Élie Ndayambaje, Sylvain Nsabimana, Alphonse Nteziryayo, Arsène Shalom Ntahobali and the Prosecution submitted oral motions requesting the Chamber to further extend the timeframe of oral submissions in this regard and to fix the duration thereof.

SUBMISSIONS OF THE PARTIES

Nyiramasuhuko's Motion

2. The Defence for Nyiramasuhuko requests that the Chamber grant two and a half days to present its closing arguments. The Defence concedes that it cannot be granted unlimited time to present its oral arguments and submissions, but asserts that a reasonable minimum would be two and a half days.

3. The Defence moves the Chamber to extend the timeframe of 45 days between closing briefs and closing arguments, so that closing arguments would commence early May 2009, at the earliest, which would be approximately 30 days more than anticipated.

4. The Defence submits that the filing of the Closing Briefs by 17 February 2009 necessarily involved physical and psychological exhaustion. More than 1,600 pages of Briefs in relation to the Accused were filed within the deadline; some were written in part in a language that Nyiramasuhuko would not be able to understand, while the Prosecutor's Closing Brief was written exclusively in English. The Defence maintains that Nyiramasuhuko has the right to understand and read the Briefs in a language she

¹ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008.

² *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Parties Oral Motions to Review the Timeframes and Length of Closing Briefs of the 2 July 2008 Scheduling Order, 29 August 2008.

understands, so that she may personally analyse the Briefs and in turn advise those representing her of her wishes in relation thereto.

5. The Defence further submits that in the various closing briefs that have been filed, there are approximately 10,000 footnotes that must be crosschecked, as errors relating to the existence of some of the assertions made in the closing briefs have already been identified.

6. The Defence argues that the Prosecution's Closing Brief with regard to Nyiramasuhuko is double the size of the closing briefs relating to the other Accused. This appears to indicate that the Prosecution considers factors relating to Nyiramasuhuko to be more pertinent, and requiring more time and effort. The Defence argues that equality of arms does not signify disparity in respect to reality, and consequently requests more time to prepare, which it believes takes nothing away from the other Accused persons.

7. The Defence concludes that the factors that underpinned the decision of 29 August 2008 have changed and given that Nyiramasuhuko has been in detention for slightly less than 12 years now, the Defence should have adequate time to prepare for oral submissions.

Ndayambaje's Motion

8. The Defence for Ndayambaje requests that the closing arguments should take place 45 days from the moment it receives the French translation of the Prosecutor's, Nteziryayo's and Nyiramasuhuko's respective Briefs.

9. The Defence submits that following the simultaneous submission of the closing briefs of all Parties, it was apparent that some briefs were filed in part, or exclusively, in English. Ndayambaje does not speak or understand English and neither do his Lead or Co-Counsel. The approximately 1,000 pages comprising the Prosecution Brief, the Nteziryayo Brief and the portion of Nyiramasuhuko's Brief submitted in English, will take time to understand and analyse.

Nsabimana's Motion

10. The Defence for Nsabimana submits that according to its interpretation of the Chamber's Decision of 29 August 2008, the 45 days mentioned therein referred to the reception of the translation from the language section.

11. The Defence asserts that it has received almost 2,100 pages from the various Parties, all of which have to be read and analysed before it can present closing arguments. The Chamber should take this into account when setting a date for the closing arguments, as the Defence would not be able to respond in a professional way and keep its ethical commitments if the 45 days time-limit is maintained.

12. The Defence argues that the time allotted to the Parties to present their closing arguments should be substantial to enable each Party to respond to every legal and factual charge laid out by the Prosecution, which is also a right of the Accused. Many points have to be answered because all the Briefs were submitted at the same time.

Nteziryayo's Motion

13. The Defence for Nteziryayo concurs with the Defence for Ndayambaje and requests that the logical time-limit would be that the 45 days start running only from the moment

when the teams receive the translations of the Briefs. This reasonable timeline would therefore be extended up until the beginning of May. The Defence further submits that it would require at least two days to present its closing arguments.

14. The Defence argues that almost the entire Defence team has been replaced with less than two years until the end of this Trial, with most being replaced only a few months prior to the end of the Trial. Consequently, it was more arduous, both physically and psychologically, for the team to comply with the Chamber's Decision of 29 August 2008.

15. The Defence submits that Nteziryayo is mainly Francophone, and the rest of the Defence team is a mix of French and English-speaking members. This requires the necessary translations of each document into French or English.

Ntahobali's Motion

16. The Defence requests two days to present its closing arguments. The Defence further submits that the 45 days should begin to run after the translation has been filed, so that Ntahobali is able to understand the Prosecution's Brief.

Prosecution's Motion

17. The Prosecution requests one week in which to make its oral submissions. It has the burden of proof and given that the Defence teams are requesting two and a half days, one week would be appropriate for it to render its submissions.

18. The Prosecution recognises that the Chamber's position is that it should be able to work in both languages of the Tribunal; however it is handicapped as three members of its team do not speak French at all. All but one of the Defence closing briefs have been filed in French. Consequently, the 45 days ordered by the Chamber in its 29 August 2009 Decision should start running once it is in receipt of the translations of the five briefs filed in French.

DELIBERATIONS

19. As a preliminary issue, recalling that according to Rule 86 (B), the final trial briefs shall be filed no later than five days prior to the day set for the presentation of the parties' closing arguments, the Chamber considers that it is the Registry's responsibility to ensure a timely translation of documents within the timeframe indicated by the Rules and directed by the Chamber.³

Applicable Law

20. The Chamber recalls that it has the inherent power to reconsider its own decisions. This is an exceptional measure available only under particular circumstances and where the interests of justice so require, including but not limited to: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original decision; (2) there has been a material change in circumstances since it made its original decision; or (3) there is reason to believe that its original decision was erroneous, or constituted an abuse of power

³ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Parties Oral Motions to Review the Timeframes and Length of Closing Briefs of the 2 July 2008 Scheduling Order, 29 August 2008, para. 18, 19.

that resulted in an injustice.⁴ The Chamber recalls that the burden rests with the party seeking reconsideration to demonstrate that sufficiently special circumstances exist.⁵

Scheduling of the Closing Arguments

21. The Chamber recalls that the timeframe of 45 days prescribed in its Decision of 29 August 2008 referred to the time between the submission of the Closing Briefs and the presentation of the closing arguments, and not the translation of the Closing Briefs as submitted by the Defence for Nsabimana.

22. The Chamber notes the Parties' submissions on the extension of the 45-day timeframe between the filing of Closing Briefs and the closing arguments notably, the unavailability of the translation, the volume of pages of the Closing Briefs to be read and the time needed to cross check footnotes and the substantive text of the closing briefs.

23. With respect to the specific issue of translation, the Chamber recalls that it has directed the Registry to prioritise the translation from English to French of the Prosecution's, Nteziryayo's and the relevant part of Nyiramasuhuko's respective Closing Briefs and expects it to be done as directed. The Chamber further recalls that the Prosecution "is expected to work equally in English and French."⁶

24. After careful consideration and in the interests of justice, the Chamber has reconsidered its earlier decision and extends the timeframe between the filing of closing briefs and submission of closing arguments by an additional two weeks. The presentation of the Parties' closing arguments will therefore commence on Monday, 20 April 2009 instead of 6 April 2009.

Duration of the Closing Arguments

25. The Chamber has also carefully considered the Parties' reasons for oral submissions to last between two days and one week. The Chamber observes that oral submissions should not entail a repetition of the arguments in the written closing briefs.

26. The Chamber considers that there is no justification for the Defence requests for two or more days of oral submissions or for the Prosecution request for one week of oral submissions. The Chamber therefore allots the Prosecution a maximum of 12 hours for its

⁴ *The Prosecutor v. Nyiramasuhuko et al.*, Case No ICTR-98-42-T, Decision on Ntahobali's Motion for Reconsideration of the Decision of 2 March 2006, 11 June 2007, paras. 9,10 quoting further decisions; *The Prosecutor v. Bizimungu et al.*, Case No ICTR-90-55-T, Extremely urgent Decision Reconsidering Trial Chamber's Decision of 24 January 2008 and Order for the Testimony of Witness RDG to be Taken by Deposition, 29 January 2008, paras. 4.5; *The Prosecutor v. Karemera et al.*, Case No ICTR-98-44-T, Decision on Motion for Partial Reconsideration of the Decision on Joseph Nzirorera's Tenth Notice of Rule 68 Violation, 16 April 2008 para. 5. See also *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, Decision on Kanyabashi's Motions for Reconsideration of the 2 July 2008 Decision, Requesting that Witnesses D-2-23-c and D-11-AB be Called to Testify, and for the Special Protective Measures for Witnesses D-2-23-c and D-11-AB, 19 January 2009, para. 35 and *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on the Parties Oral Motions to Review the Timeframes and Length of Closing Briefs of the 2 July 2008 Scheduling Order, 29 August 2008, paras. 9, 10.

⁵ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza, 29 September 2008, para. 4.

⁶ *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-A, Decision on Prosecution Urgent Motion for an Extension of Time to File Notice of Appeal (AC), 17 December 2003.

closing arguments and, underscoring that all Accused be treated equally, allots each Defence a maximum of six hours for its closing arguments.

27. The Chamber underscores that the presentation of the closing arguments should be continuous amongst the different Parties: once one Party finishes its presentation, the Party following it must be prepared to commence immediately. The presentation order of the Defence teams after that of the Prosecution will be: Nyiramasuhuko, Ntahobali, Nsabimana, Ntezirwayo, Kanyabashi and Ndayambaje.

28. Finally, the Chamber reminds the Parties of its previous order requiring each of them to address matters of sentencing during closing arguments, pursuant to Rule 86 (C).⁷

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion in part;

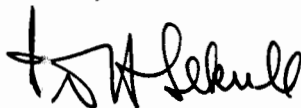
ORDERS that the closing arguments shall be heard continuously from 20 April 2009 until 30 April 2009;

ORDERS that the Prosecution will have a maximum of 12 hours, and each Defence will have a maximum of six hours for closing arguments;

REMINDS AND ORDERS that each Party shall address matters of sentencing during closing arguments;

ORDERS the Registry to provide the translations of the Closing Briefs in a timely manner and according to the Chamber's stated priorities, as earlier directed.

Arusha, 5 March 2009



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

⁷ *Prosecutor v. Nyiramasuhuko et al., Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008.*

closing arguments and, underscoring that all Accused be treated equally, allots each Defence a maximum of six hours for its closing arguments.

27. The Chamber underscores that the presentation of the closing arguments should be continuous amongst the different Parties: once one Party finishes its presentation, the Party following it must be prepared to commence immediately. The presentation order of the Defence teams after that of the Prosecution will be: Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo, Kanyabashi and Ndayambaje.

28. Finally, the Chamber reminds the Parties of its previous order requiring each of them to address matters of sentencing during closing arguments, pursuant to Rule 86 (C).⁷

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion in part;

ORDERS that the closing arguments shall be heard continuously from 20 April 2009 until 30 April 2009;

ORDERS that the Prosecution will have a maximum of 12 hours, and each Defence will have a maximum of six hours for closing arguments;

REMINDS AND ORDERS that each Party shall address matters of sentencing during closing arguments;

ORDERS the Registry to provide the translations of the Closing Briefs in a timely manner and according to the Chamber's stated priorities, as earlier directed.

Arusha, 5 March 2009



William H. Sekule
Presiding Judge



Arlette Ramarason
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

⁷ *Prosecutor v. Nyiramasuhuko et al., Case No. ICTR-98-42-T, Scheduling Order, 2 July 2008.*