



ICTR-98-41-T  
24-03-2009  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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(40728 - 40726)

ORIGINAL: ENGLISH

TRIAL CHAMBER I

**Before:** Judge Erik Møse

**Registrar:** Adama Dieng

**Date:** 24 March 2009

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

*Case No. ICTR-98-41-T*

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DECISION ON PROSECUTION MOTION REQUESTING THE TRIAL CHAMBER  
TO LIFT CONDITIONS ON GRATIEN KABILIGI'S LIBERTY

**The Prosecution**  
Hassan Bubacar Jallow  
Alex Obote-Odora  
George Mugwanya

**The Defence**  
Paul Skolnik

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## THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

**SITTING** as Judge Erik Møse, designated by Trial Chamber I, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence;

**BEING SEIZED OF** the Prosecution motion to lift conditions on Gratien Kabiligi's liberty, filed on 18 March 2009;

**HEREBY DECIDES** the motion.

### INTRODUCTION

1. Gratien Kabiligi is one of four accused that were tried in the case of *Prosecutor v. Bagosora et al.* The Chamber rendered an oral summary of its judgement on 18 December 2008.<sup>1</sup> It convicted the other three accused but acquitted Kabiligi of all counts and ordered his immediate release.<sup>2</sup>

2. On 22 December 2008, the Prosecution filed an urgent motion requesting that restrictions be imposed on Kabiligi's liberty pending its decision on whether to appeal.<sup>3</sup> The motion was granted, in part, in a decision dated 31 December 2008 requesting him to keep his whereabouts known to the Tribunal and his counsel.<sup>4</sup> The written judgement was filed on 9 February 2009.<sup>5</sup> Having considered it, the Prosecution has decided not to appeal the acquittal. In the interests of justice, it now applies for the Chamber to vacate its previous order because it will no longer be relevant.<sup>6</sup> The Defence has not filed any response.

### DELIBERATIONS

3. As a preliminary matter, the Chamber is satisfied that it has the jurisdiction, based on Rule 99 (B) of the Rules of Procedure and Evidence and its inherent authority to ensure the enforcement of its judgement, to issue such consequential decisions and orders as may be necessary, in the interests of justice, concerning acquitted persons.<sup>7</sup>

4. Rule 99 (B) authorises a Chamber to issue a warrant for the arrest and further detention of an acquitted person with immediate effect if the Prosecution at the time the judgement is pronounced advises the Trial Chamber in open court of its intention to file a

<sup>1</sup> Summary of Judgement, T. 18 December 2008.

<sup>2</sup> T. 18 December 2008 pp. 9-10.

<sup>3</sup> Prosecutor's Extremely Urgent Motion Requesting the Chamber to Impose Conditions on Kabiligi's Liberty Pending the Prosecutor's Decision to Appeal, 22 December 2008, paras. 1-8.

<sup>4</sup> Decision on Prosecution Motion to Impose Conditions on Kabiligi's Liberty (TC), 31 December 2008 (the "Decision").

<sup>5</sup> Judgement and Sentence (TC), 18 December 2008, filed on 9 February 2009.

<sup>6</sup> Prosecutor's Motion Requesting the Trial Chamber to Lift Conditions on Kabiligi's Liberty Imposed in the "Decision on the Prosecution Motion to Impose Conditions on Kabiligi's Liberty" dated 31 December 2008, filed on 18 March 2009, paras. 3-4.

<sup>7</sup> Decision, para. 4, referring to *In re André Ntagerura*, Decision on Motion for Leave to Appeal the President's Decision of 31 March 2008 and Decision of Trial Chamber III of 15 May 2008 (AC), 11 September 2008, para. 13, and the *Rwamakuba* case, where the Trial Chamber held separate proceedings following the issuance of the judgement concerning an appropriate remedy for certain violations of fair trial rights. See Decision on Appropriate Remedy (TC), 31 January 2007. The Appeals Chamber affirmed this exercise of the Trial Chamber's jurisdiction. See Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 26.

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notice of appeal. The Tribunal has never issued a warrant for the further detention of an acquitted person. However, this provision has been used to impose lesser restrictions, such as the surrender of travel documents, placement in a safe house pending relocation to another state and requirements to report to certain authorities.<sup>8</sup>

5. In its decision of 31 December 2008, the Chamber found that the Prosecution had not shown sufficient cause to impose the requested restrictions on Kabiligi's liberty, given the *de facto* limitations on his movement.<sup>9</sup> Nevertheless, it was in the interests of justice that he be available and accessible in the event of continued proceedings against him. Kabiligi was therefore requested to keep the Tribunal and his counsel fully informed of his whereabouts if his residence changed before the expiration of the period for filing a notice of appeal.<sup>10</sup> As this period has now expired, Kabiligi is no longer required to do so. However, in view of the Prosecution motion, the Chamber finds it useful to clarify the situation.

**FOR THE ABOVE REASONS, THE CHAMBER**

**RESCINDS** its decision of 31 December 2008.

Arusha, 24 March 2009



Erik Møse  
Presiding Judge

[Seal of the Tribunal]



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<sup>8</sup> Decision, para. 5.

<sup>9</sup> *Id.* para. 8.

<sup>10</sup> *Id.* para. 9.