



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-54-T
26-03-09
(501-498)

501
PM

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 26 March 2009

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The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

**DECISION ON DEFENCE MOTION TO STRIKE THE PROSECUTOR'S REQUEST
TO AUGUSTIN NGIRABATWARE TO ADMIT FACTS PURSUANT TO
RULE 73 *BIS*(B)(ii) OF THE RULES**

Office of the Prosecutor

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

Defence Counsel

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, Pursuant to Rule 73 (A), to Strike Prosecutor’s Request to Augustin Ngirabatware to Admit Facts Pursuant to Rule 73bis(B)(ii) Because the Request is Premature”, filed on 11 March 2009 (the “Motion”);

CONSIDERING:

- a) The “Prosecutor’s Response to the Defence Motion Pursuant to Rule 73 (A) to Strike Out the Prosecutor’s Request to Admit Facts”, filed on 13 March 2009 (the “Response”); and
- b) The “Reply to the Prosecutor’s Response to the Defence Motion Pursuant to Rule 73 (A) to Strike the Prosecutor’s Request to Admit Facts”, filed on 19 March 2009 (the “Reply”);

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 9 March 2009, the Prosecution filed a request to the Defence for admission of facts pursuant to Rule 73 bis(B)(ii) of the Rules, in which the Defence was asked to specify which factual allegations submitted by the Prosecution the Accused admits and which he intends to dispute (“Request to Admit Facts”).¹
2. The Accused responded to the Request on 12 March 2009, accepting some and denying most of the factual allegations put to him in the Request (“Response to the Request”).²
3. The Chamber recalls that the Defence was allotted three days from the reception of the Prosecution’s Response to file its reply. In the instant case, the Prosecution filed its responses on 13 March 2009 whereas the Reply was only filed on 19 March 2009. In the Chamber’s view, the Reply is time barred; however and in the interest of justice the Chamber will consider it while determining the Motions. The Chamber expects the Parties to comply with the prescribed deadlines in future.

SUBMISSIONS OF THE PARTIES***Defence Motion***

4. The Defence moves for an order striking the Request.³ The Defence submits that the Request is premature as it was made pursuant to Rule 73 bis(B)(ii) which stipulates that “[a]t

¹ Prosecutor’s Request to Augustin Ngirabatware to Admit Facts Pursuant to Rule 73bis(B)(ii) of the Rules of Procedure and Evidence, 9 March 2009, para. 1.

² Responses of Dr. Ngirabatware to Prosecutor’s Request to Admit Facts, 12 March 2009.

the Pre-Trial Conference the Trial Chamber [...] may order the Prosecutor [...] to file [...] [a]dmissions by the parties". Since there has been no Pre-Trial Conference or order to the Prosecution to date, the Defence claims that the Prosecution had no legal basis to file its Request.⁴

5. Further, the Defence refers to its pending "Motion to dismiss (*sic*) based upon defects in the Indictment", filed on 11 March 2009, and notes that it challenges a great majority of the factual allegations contained in the Request to Admit Facts. The Defence claims that the Request to Admit Facts would be moot should the Defence Motion to Dismiss be granted.⁵

Prosecution's Response

6. The Prosecution notes that the Defence has answered the Request to Admit Facts in its Response filed on 12 March 2009, a day prior to the filing of the Prosecution's Response to the Motion. The Prosecution submits that, in these circumstances, the Motion is frivolous and/or an abuse of the process.⁶ The Prosecution therefore requests the Trial Chamber to dismiss the Motion in its entirety and moves for a sanction against Counsel pursuant to Rule 73 (F) of the Rules.⁷

Defence Reply

7. The Defence argues that it responded to the Request out of an abundance of caution. It claims that a failure of the Defence to respond to the Request in a timely manner would have resulted in the alleged facts being deemed admitted.⁸

8. The Defence therefore submits that its Motion is neither frivolous nor deserving of sanctions.⁹

DELIBERATIONS

9. As a preliminary matter, the Trial Chamber notes that the Prosecution Request to Admit Facts was not premature. Indeed, the wording of Rule 73 *bis*(B) of the Rules stipulates that at the Pre-Trial Conference, the Trial Chamber "may" order the Prosecution to file admissions by the Parties. This implies that such admissions can also be filed prior to a Pre-Trial Conference and that the Trial Chamber can subsequently note those admissions during the Pre-Trial Conference. The Trial Chamber considers that such an approach is in line with the Accused's right to an expeditious trial, considering that the trial is scheduled to start on 18 May 2009.

10. Nevertheless, the Trial Chamber considers the Motion to be moot, as the Defence has already responded to the Request to Admit Facts. Regarding the Prosecution request for sanction, the Chamber does not deem it necessary to warn Counsel for the Defence against the filing of frivolous Motions at this stage of the proceedings. However, the Chamber emphasises that Counsel for the Defence should be mindful of the procedural context in

³ Motion, para. 4.
⁴ Motion, para. 3(a).
⁵ Motion, para. 3(b).
⁶ Response, para. 3.
⁷ Response, para. 4.
⁸ Reply, para. 7(b).
⁹ Reply, para. 7(c).

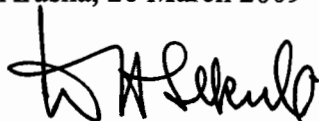
which the Tribunal operates to avoid the filing of what could be considered as frivolous motions.

FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Motion in its entirety; and

DENIES the Prosecution's request for sanction against Counsel under Rule 73(F) of the Rules.

Arusha, 26 March 2009



William H. Sekule
Presiding Judge



Arlette Ramarison
Judge



Solomy Balungi Bossa
Judge

