



ICTR-99-54-T
26-03-09
(497-493)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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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

The PROSECUTOR

v.

Augustin NGIRABATWARE
Case No. ICTR-99-54-T

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DECISION ON NGIRABATWARE'S MOTIONS UNDER RULE 66

Office of the Prosecutor

Mr. Wallace Kapaya
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Mr. Brian Wallace
Mr. Iskandar 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 “Chamber”);

BEING SEIZED of the:

- a) “Defence Motion for Disclosure Pursuant to Rule 66 (A) (i) of the Rules of Procedure and Evidence”, filed on 11 March 2009 (the “First Motion”);
- b) “Defence Request for Production Pursuant to Rule 66 (B), filed on 11 March 2009 (the “Second Motion”);

CONSIDERING the:

- a) “Prosecutor’s Response to the Defence Motion for Disclosure Pursuant to Rule 66 (A) (ii) of the Rules of Procedure and Evidence”, filed on 13 March 2009 (the “Response to the First Motion”);
- b) “Prosecutor’s Response to the Defence Motion for Production Pursuant to Rule 66 (B) of the Rules of Procedure and Evidence”, filed on 13 March 2009 (the “Response to the Second Motion”);
- c) “Dr. Ndirabatware’s Consolidated Reply to Prosecutor’s responses Filed on March 13, 2009”, filed on 19 March 2009 (the “Defence Consolidated 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. In the interests of justice, the two Motions are dealt with in this single Decision as both are brought under Rule 66 of the Rules.

2. 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 Defence Consolidated Reply was only filed on 19 March 2009. In the Chamber’s view, the Defence Consolidated 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

The Defence

3. The Defence requests the disclosure by the Prosecution of certain documents under Rule 66 (A)(i).¹ It submits that without these documents being disclosed, the timeframes to file preliminary motions should not run.

4. The Defence further requests under Rule 66 (B) the inspection and/or photocopying of five items which were obtained from or belonged to the Accused² as well as any book, photograph and tangible objects in the custody or control of the Office of the Prosecutor which are intended for use by the Prosecutor at trial or may be material to the preparation of the defence.

The Prosecution

5. The Prosecution objects to the Motion for disclosure under Rule 66 (A)(ii).³


6. Regarding the request for inspection under Rule 66 (B), the Prosecution submits that during the status conference held on 9 February 2009, it had invited the Defence to proceed with the inspection of the items listed in the Motion. The Prosecution indicates that the only matter which remains to be addressed is the setting of the date and time for the inspection to be carried out.

7. The Prosecution stresses that the Defence request is an abuse of process and frivolous justifying sanction under Rule 73 (F).

¹ Paragraph 1 of the First Motion reads: "As of the date of this Motion, the Prosecutor has not furnished the Accused with the following Rule 66 (A) (i) disclosure: a) there is no statement from supporting witness ANAB, b) the report, marked with initials ANAB and ANAC refers to underlying documents but no such documents are provided, c) there is no statement from the unidentified Ministry of Planning Official, d) ANAG was interviewed on two separate occasions, the 1999 interview has only been provided in English, e) the statement from supporting witness ANAF is in French only, f) the statement from supporting witness ANAI is so severely redacted as to be unreadable, g) there is no statement in French from supporting witness ANAM, h) none of the three statements from supporting witness ANAN (handwritten, French and English) are signed, i) there is no statement in English from supporting witness ANAP and k) there is nothing to support the allegation in paragraphs 15 and 38 of the Amended Indictment that the Accused diverted funds to buy weapons."

² These items are : a notebook entitled : "1994 Agenda" seized in Paris, a laptop seized at the Jabba Multimedia computer firm, Berger Strasse 166, 60385 Frankfurt am Main, one Siemens C 25 mobile telephone, one USB Memory Stick "Cruser" and a brown notebook seized at Weiterstadt Prison in Germany.

³ Paragraph 3 of the Prosecution's Response to the First Motion reads: "The Prosecutor hereby responds as follows in respect of the matters raised in paragraph 1 of the Defence Motion: a) Defence item 1 (a): the report constitutes the statement of witness ANAB, (b) Defence item b): the Prosecutor is not in possession of the underlying documents either. He has requested for the documents from witnesses ANAB and ANAC and will disclose them as soon as they are available; in a any event before the commencement of trial, c) Defence item 1 (c): a statement will be made available as soon as one is reduced in writing; d) Defence item 1(d), 1(e), 1(g), 1(i), 1(j): translation of the statements in the missing language in respect of the statements was requested for on 21 and 27 January 2009. So far translation has been done in respect of statements of witnesses ANAO and ANAP, and that translation is still pending in respect of witnesses ANAM, ANAG and ANAF. Disclosure of statements of witnesses ANAO and ANAP will be effected today, in terms of Rule 66 (A) (ii) of the Rules of Procedure and Evidence, e) Defence item 1(f): the Prosecution does not agree that the statement is over redacted. In any event the unredacted statement of witness ANAI will be disclosed today pursuant to Rule 66 (A) (ii) of the Rules of Procedure and Evidence, f) Defence item (h): the witness will be requested to sign in due course, and the signed statement will be disclosed to the Defence, g) Defence item (k): paragraphs 15 and 38 are supported by witnesses ANAC, ANAB, ANAP and the Ministry of Planning official.



The Defence Reply

8. The Defence submits that the Prosecution objects to the Motion for disclosure under Rule 66 (A) (i) while at the same time conceding that it has not yet disclosed some of the material sought by the Defence.

9. The Defence further submits that its request for inspection is not frivolous, according to the minutes of proceedings of 9 February 2009, the Prosecution asked the Defence to file a formal request to enjoy its rights to inspection.

DELIBERATIONS

• ***Request for Disclosure Under Rule 66 (A) (i)***

10. The Chamber recalls the provision of Rule 66 (A) (i): “The Prosecutor shall disclose to the Defence within 30 days of the initial appearance of the accused, copies of the supporting material which accompanied the indictment when confirmation was sought as well as all prior statements obtained by the Prosecutor from the accused.”

11. The Chamber recalls that the Accused made his further appearance on 9 February 2009 and that the deadline for the Prosecution to disclose its supporting material therefore expired on or around 11 March 2009. The Chamber further observes that in the instant case, the Prosecution appears to have addressed the Motion under Rule 66 (A) (ii) instead of Rule 66 (A) (i). Nevertheless, on the basis of the Prosecution’s Response, the Chamber considers that the material in support of the amended indictment appears to have been disclosed to the Defence and that the remaining Defence Request addresses matters under Rule 66(A)(ii).

• ***Request for Disclosure Under Rule 66 (B)***

12. The Chamber recalls the provisions of Rule 66 (B): “At the request of the Defence, the Prosecutor shall, subject to Sub-Rule (C), permit the Defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.”

13. The Chamber notes the Prosecution’s consent for the Defence to inspect the items described in the Motion and therefore directs the Parties to make the necessary arrangements for the inspection to take place. The Chamber recalls that the filing of Motions under Rule 66(B) should be limited to contested matters of inspection. The proper procedure would be for the Defence to address the Prosecution by way of a correspondence regarding the items it intends to inspect. It is only when the issues cannot be settled that the Trial Chamber should be seized of the contested matter.

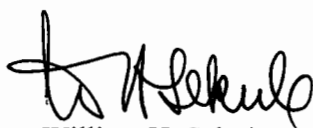
14. In the circumstances, taking into account that Counsel has recently been appointed, the Chamber does not find the Defence request to be frivolous or an abuse of process warranting any sanction.

FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motions;

DIRECTS the Parties to set a timeframe for the inspection to be carried out.

Arusha, 26 March 2009



William H. Sekule
Presiding Judge



Arlette Ramarason
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

