



ICTR-02-78-I
29-05-2009
(2888-2885)

2888
Mwamp

OR: ENG

TRIAL CHAMBER II

Before Judges: Emile Francis Short, Presiding
Seon Ki Park
Joseph Masanche

Registrar: Adama Dieng

Date: 29 May 2009

2009 MAY 29 P 1:30
JUDICIAL RECORDS ARCHIVE
RECEIVED

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-I

**DECISION ON THE EXTREMELY URGENT DEFENCE MOTION FOR
POSTPONEMENT OF THE START OF THE TRIAL**

Office of the Prosecutor:
Hola Makwaia
Thembile Segoete
Didace Nyirinkwaya
Jonathan Moses

Defence Counsel:
David Jacobs
Marc Nerenberg

Spawda

INTRODUCTION

1. The trial in this matter is scheduled to commence on 1 June 2009.¹
2. On 20 May 2009, the Defence filed an Extremely Urgent Motion for Postponement of the Start of the Trial.² Relying on the Appeals Chamber's recent interlocutory decision in *Ngirabatware v. Prosecutor*³, the Defence argues that the scheduled date for the commencement of proceedings does not allow the Accused sufficient time to prepare his defence and thus infringes his right to a fair trial.⁴
3. On 25 May 2009, the Prosecution filed a confidential Response to the Defence Motion. The Prosecution does not oppose the Defence motion but submits that it has fulfilled its disclosure requirements under the Rules of Procedure and Evidence (the "Rules") and is ready to begin trial on 1 June 2009 or any subsequent date.⁵
4. On 25 May 2009, the Registrar filed submissions pursuant to Rule 33(B) of the Rule, indicating that appointments to the Defence Team were made in a timely manner; that the Registry does not possess files belonging to former Defence Counsel; and that Kinyarwanda interpreters are available to support the Defence upon request.⁶
5. On 27 May 2009, the Defence filed a Confidential Addendum to its original motion for postponement, advising that Co-Counsel for the Accused had resigned.⁷ The Defence explains that, due to the unavailability of Lead Counsel during June 2009, Co-Counsel was slated to handle all courtroom work for the Defence during the Prosecution's presentation of its case.⁸
6. On 28 May 2009, the Prosecution filed a Response to the Addendum, indicating that it takes no position on the new development concerning Co-Counsel and that it leaves the decision on the commencement of the trial to the discretion of the Chamber.⁹
7. On 29 May 2009, the Registrar issued a confidential Decision withdrawing Mr. Paul Skolnik as Co-Counsel for the Accused Gaspard Kanyarukiga.¹⁰

DELIBERATIONS

8. As noted by the Appeals Chamber in *Ngirabatware*, "[t]he length of the preparation period [for a defence] depends on a number of factors specific to each case, such as, for example, the complexity of the case, the number of counts and charges, the gravity of the

¹ *Prosecutor v. Kanyarukiga*, Case No ICTR-2002-78-I, Scheduling Order Following the Status Conference, 24 April 2009, para. 1(I).

² Extremely Urgent Defence Motion for Postponement of the Start of the Trial, filed on 20 May 2009.

³ Case No ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date (AC), 12 May 2009.

⁴ Motion, para. 3.

⁵ Prosecutor's Response to the Defence Extremely Urgent Motion for Postponement of the Start of the Trial, filed on 25 May 2009, paras. 3, 9.

⁶ Registrar's Submissions under Rule 33(B) of the Rules on the Extremely Urgent Defence Motion for Postponement of Trial, filed 25 May 2009.

⁷ Addendum to Extremely Urgent Defence Motion for Postponement of the Start of the Trial, filed on 27 May 2009.

⁸ Addendum, para. 3.

⁹ Prosecutor's Response to the 'Addendum to Extremely Urgent Motion for Postponement of the Start of the Trial', filed on 28 May 2009.

¹⁰ Decision Withdrawing Mr. Paul Skolnik as Co-Counsel for the Accused Gaspard Kanyarukiga, filed on 29 May 2009.

Spaul

crimes charged, the individual circumstances of the accused, the status and scale of the Prosecution's disclosure, and the staffing of the Defence team."¹¹

9. In this case, the Chamber finds that the reasons given in the Defence motion do not justify the postponement of the trial. The Prosecution has fully complied with its obligations under Rule 66(B).¹² As acknowledged by the Defence, the Prosecution disclosed all unredacted witness statements more than 30 days prior to the commencement of trial. The Prosecution also disclosed unredacted transcripts from the *Seromba* trial and all Gacaca court materials in its possession.

10. The Chamber further notes that resignation of Co-Counsel does not automatically require the postponement of a trial, as Lead Counsel should be able to take over. However, given the division of responsibility in this case, as well as the unavailability of Lead Counsel in June 2009, the Chamber finds that the Accused could be prejudiced if his trial were to go forward as scheduled.

11. The Chamber, however, reminds Defence Counsel of his obligations under Rule 45^{ter} and Articles 13(v) and 15(E) of the Directive on the Assignment of Defence Counsel.¹³ The Chamber expects Lead Counsel to manage his time according to the Chamber's schedule and to give priority to this case over any domestic commitments.¹⁴ In addition, the Chamber urges the Defence to prepare its case in a manner that, in the future, would allow the case to proceed in the absence of either Lead or Co-Counsel.

¹¹ *Ngirabatware*, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date, para. 28.

¹² Rule 66(B) of the Rules of Procedure and Evidence provides that, "[a]t the request of the Defence, the Prosecutor shall ... 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." In this case, this Tribunal ordered the Prosecution to disclose to the Defence, thirty days prior to the commencement of the Prosecution's case, all information withheld pursuant to the order of protective measures. *Prosecutor v. Kanyarukiga*, Case No ICTR-2002-78-1, Decision on Prosecution Motion for Protective Measures, 3 June 2005, para. 10.

¹³ According to Article 15(E) of the Directive, Lead Counsel has "primary responsibility" for the Defence.

¹⁴ *Prosecutor v. Rukundo*, Case No ICTR-2001-70-T, Decision on the Defence Motion to Re-schedule the Filing of Closing Briefs and the Hearing of Closing Arguments, 9 November 2007, para. 4.

Spaw

2885

FOR THESE REASONS, the Chamber

GRANTS in part the Defence Motion;

POSTPONES the commencement of the trial to a later date, which will be communicated to the parties in due course;

INSTRUCTS the Defence and the Registry to immediately make arrangements for the replacement of Co-Counsel;

DENIES the motion in all other respects.

29 May 2009

Emile Francis Short

Emile Francis Short

Presiding Judge

Seon Ki Park

Seon Ki Park

Judge

Joseph Masanche

Joseph Masanche

Judge

