

ICTR-05-82-T
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(1314-1311)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 2 July 2009

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-T

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DECISION ON DEFENCE MOTION FOR NO CASE TO ANSWER

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Charles Adeogun-Phillips
Ibukunolu Alao Babajide
Thembile Segoete
Ndeye Marie Ka

Counsel for the Defence:

Maroufa Diabira
Dorothee Le Fraper du Hellen

INTRODUCTION

1313

1. On 26 May 2009, the Prosecution closed its case after calling 12 witnesses over 12 trial days.
2. On 18 June 2009, the Defence filed a motion for no case to answer.¹ The Defence requests the Chamber to strike out paragraphs 10, 12, 14, 26 and 31 of the Indictment,² or indicate that it will not consider those specific allegations during final deliberations.
3. On 23 June 2009, the Prosecution filed its response, opposing the Defence Motion in its entirety.³

DISCUSSION

Rule 98bis and No Case to Answer

4. Rule 98bis of the Rules of Procedure and Evidence ("Rules") states:

If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the Indictment, the Trial Chamber, on motion of an accused filed within seven days after the close of the Prosecution's case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

5. Rule 98bis, therefore, confers upon a Trial Chamber the power to enter a judgment of acquittal on any counts in the indictment where there is insufficient evidence to sustain a conviction. The jurisprudence of both this Tribunal, and that of the International Criminal Tribunal for the Former Yugoslavia, has consistently held that the wording of Rule 98bis implies that its jurisdiction is restricted to orders for judgment of acquittal on counts in the indictment, and not paragraphs.⁴

¹ *Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-I, Defence Motion for No Case to Answer, 18 June 2009 ("Motion").

² The fourth Amended Indictment, as filed on 19 May 2009 and which is considered the live Indictment ("Indictment"). In this respect, see *Ntawukulilyayo*, Decision on Defence Motion Alleging Non Compliance of the Amended Indictment with the Chamber's Decision of 18 May 2009, 26 June 2009, para. 11.

³ *Ntawukulilyayo*, Prosecution Response to Defence Motion for No Case to Answer, 23 June 2009 ("Prosecution Response").

⁴ *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement (AC), 5 July 2001, para. 37 where the Appeals Chamber held that the test under Rule 98bis is whether the Prosecution evidence is sufficient to sustain a conviction beyond reasonable doubt, and similarly, see *Prosecutor v. Delalić et al.*, Judgement (AC), 30 February 2001, para. 434; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T Decision on Motions for Judgement of Acquittal (TC), 2 February 2005 ("*Bagosora Decision*"), paras. 8-9; *Prosecution v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for Judgement of Acquittal (TC), 28 October 2005 ("*Rwamakuba Decision*"), para. 8; *Prosecution v. Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal pursuant to Rule 98bis (TC), 13 October 2005 ("*Muvunyi Decision*"), para. 39; *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T, Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98 bis (TC), 22 May 2007 ("*Rukundo Decision*"), para. 5; *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on Defence Motion Pursuant to Rule 98 bis (TC), 21 February 2007 ("*Zigiranyirazo Decision*") paras. 10, 20; *Prosecutor v. Nindiyimana et al.*, Case No. ICTR-2000-56-T, Decision on Defence Motions for Judgement of Acquittal, (TC), 20 March 2007 ("*Nindilyimana Decision*"), para. 9 (citing *Bagosora Decision*, paras. 8-9); *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Defence Motions for Acquittal Under Rule 98 bis (TC), 16 December 2004 ("*Nyiramasuhuko Decision*"), paras. 80-81.



1312

6. Further, when considering Rule 98bis motions, Chambers have held that a paragraph by paragraph analysis of the indictment would draw them into an “unwarranted substantive evaluation of the quality of much of the Prosecution evidence”, which is not necessary, nor appropriate when considering a Rule 98bis motion.⁵ Chambers have further held that under Rule 98bis, a paragraph by paragraph analysis is particularly inappropriate when paragraphs of the indictment are interdependent, narrating disparate material facts which when viewed as a whole, purport to show that the accused committed the alleged crimes.⁶

7. The Chamber recalls that in some Rule 98bis decisions, Trial Chambers have ruled that the defence is not required to answer allegations contained in specific paragraphs.⁷ It is however noted that in virtually all those cases, the Prosecution had conceded that it led no evidence in respect of those paragraphs.⁸

Merits of the Defence Motion

8. Rule 98bis expressly provides the defence with an opportunity to bring a motion in circumstances where it considers that there is insufficient evidence to support a conviction on counts in the indictment. There is no express provision in the Rules with regard to “no case to answer” on specific allegations or paragraphs where the defence is not seeking to alter a count in the indictment. The Chamber notes that the Defence, in its Motion, has therefore sought to rely on Articles 19 and 20 of the Tribunal’s Statute and Rule 54 of the Rules,⁹ rather than relying on Rule 98bis. For this reason, the Defence further submits that the seven day time limit under Rule 98bis does not apply to the Defence Motion.¹⁰

9. The Chamber is unconvinced by the Defence argument. The Chamber considers that the Defence cannot seek to circumvent the express provision in Rule 98bis, by arguing that the Motion is brought pursuant to Articles 19 and 20 of the Statute and Rule 54 of the Rules. The Chamber considers that the jurisprudence of both *ad hoc* Tribunals, which consistently states that a paragraph by paragraph analysis will not be undertaken by Chambers, is equally applicable to the present case.

10. In addition, while the Chamber notes that the *Karemera* Trial Chamber has considered the merits of a defence motion on no case to answer with respect to specific paragraphs,¹¹ this

⁵ *Bagosora* Decision, paras. 8-9.

⁶ *Rwamakuba* Decision, para. 8; *Bagosora* Decision, para. 9; *Muvunyi* Decision, para. 39; *Ndindiliyamana*, Decision, para. 10; and *Prosecutor v. Bizimungu et. al.*, Case No. ICTR-99-50-T, Decision on Defence Motion Pursuant to Rule 98bis (TC), 22 November 2005, para. 11.

⁷ See for example, *Ndindiliyamana*, decision, para. 10; *Mpambara* Decision, paras. 7-8; *Zigiranyirazo* Decision, para. 29; *Rukundo* Decision, paras. 7-9; *Prosecutor v. Karemera et. al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera and Edouard Karemera’s Motions for No Case to Answer (TC), 19 March 2008 (*Karemera* Decision), para. 3.

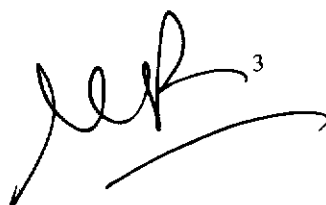
⁸ See for example, *Ndindiliyamana* decision, para. 10; *Mpambara* Decision, paras. 7-8. *Zigiranyirazo* Decision, para. 29; *Rukundo* Decision, paras. 7-9.

⁹ Article 19 (1) of the Statute provides that Trial Chambers shall ensure a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses. Article 20 of the Statute sets out the rights of the accused. Rule 54 of the Rules provides, among other things, that at the request of either party, or *proprio motu*, a Chamber may issue such orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

¹⁰ Motion, paras. 1-3.

¹¹ *Karemera* Decision.

2 July 2009



1311

Chamber notes that the *Karemera* Trial Chamber, whilst considering the merits of the defence motion in that case, nonetheless stated, in line with the Tribunal's consistent jurisprudence, that the promotion of a fair trial does not require a paragraph by paragraph analysis of the indictment to eliminate any allegation on which evidence has not been led.¹²

11. Accordingly, the Chamber will not assess each of the paragraphs of the Indictment on which the Defence submits that evidence was not led.

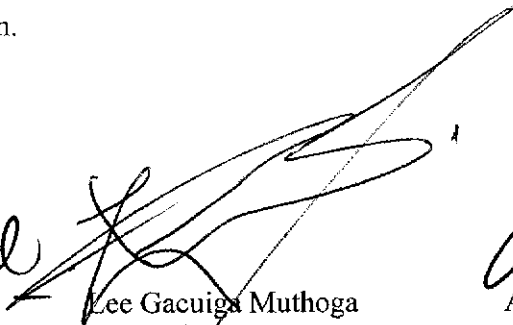
FOR THESE REASONS, the Chamber

DENIES the Defence Motion.

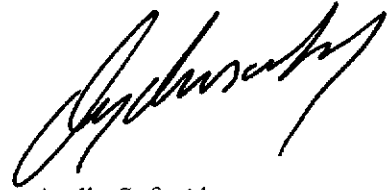
Arusha, 2 July 2009



Khalida Rachid Khan
Presiding Judge



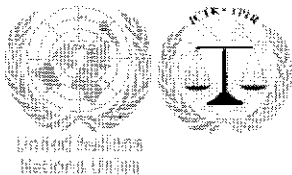
Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge



¹² *Karemera* Decision, para. 4.



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