



ICTR-01-69-I  
24-11-2009  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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(3465 - 3462)

ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

**Before:** Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 24 November 2009

**THE PROSECUTOR**

v.

**Hormisdas NSENGIMANA**

*Case No. ICTR-2001-69-I*

2009 NOV 24 P 5:23  
JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON THE PROSECUTION MOTION TO IMPOSE RESTRICTIONS ON  
NSENGIMANA'S LIBERTY**

**The Prosecution**

Hassan B. Jallow  
Alex Obote-Odora  
Linda Bianchi  
Renifa Madenga  
Thembile Segoete  
Priyadarshini Naranyanan  
Shamus Mangan

**The Defence**

Emmanuel Altit  
David Hooper  
Sarah Lichterman  
Alexandra Haziza

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov and Judge Florence Rita Arrey;

**BEING SEIZED OF** the Prosecution motion to impose conditions on Nsengimana's liberty, filed on 19 November 2009;

**CONSIDERING** the Defence response, filed on 23 November 2009;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. On 17 November 2009, the Chamber pronounced its judgement and indicated that the written version would be available at the conclusion of the editorial process. Hormisdas Nsengimana was acquitted on all counts, and the Chamber ordered his immediate release. During the oral hearing, the Prosecution did not express its intention to file a notice of appeal.<sup>1</sup>

2. The Prosecution requests restrictions on Nsengimana's liberty until it has decided whether to appeal. He should not leave the vicinity of the seat of the Tribunal without permission of the Chamber, deposit travel documents, and report daily to Tribunal authorities. Although the request is made two days after the judgment was pronounced, there is good cause for the delay. Moreover, Nsengimana poses a high risk of flight, and the restrictions sought are reasonable, temporary and respect Nsengimana's rights.<sup>2</sup>

3. The Defence opposes the motion. Good cause does not exist to justify its late filing, and the Chamber no longer retains jurisdiction. Furthermore, Nsengimana is in a safe house under the supervision of the Registry, which is in possession of his travel documents. He is not a flight risk. The restrictions are not reasonable and do not respect his rights. It is recalled that he has been in detention for seven years.<sup>3</sup>

**DELIBERATIONS**

4. Rule 99 (B) of the Rules of Procedure and Evidence 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 notice of appeal. The Prosecution did not do so.<sup>1</sup> The Defence argues that Rule 99 (B) prohibits the Prosecution from requesting provisional restrictions afterwards.

5. The Chamber recalls that a Trial Chamber continues to have jurisdiction over a case until the Appeals Chamber is seised of it. It is established case law that Rule 99 (B) and the Trial Chamber's inherent authority to ensure the enforcement of its judgement allow it to issue orders concerning acquitted persons even when a request is made after its

<sup>1</sup> T. 17 November 2009 pp. 2, 6-7.

<sup>2</sup> Prosecution *Extremely Urgent* Motion Requesting Imposition of Conditions on Nsengimana's Liberty Pending Its Decision to Appeal, filed on 19 November 2009, paras. 3-9.

<sup>3</sup> *Réponse de l'équipe de défense du père Nsengimana à la requête du procureur intitulée "Prosecution Extremely Urgent Motion"* etc., filed on 23 November 2009, paras. 6-27.

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pronouncement.<sup>4</sup> The Chamber therefore has jurisdiction to consider the Prosecution motion.

6. Even though the request to impose restrictions on Nsengimana's liberty was not timely under Rule 99 (B), the Chamber may allow an extension of time or consider a motion as being timely filed upon a showing of good cause or in the interest of justice.<sup>5</sup> The Prosecution submits, first, that it had not received the full text of the judgement and needed to review transcripts of the oral summary. Moreover, change in the composition of the Prosecution team and the fact that it filed the motion only two days after the oral pronouncement offer further justification for the late filing. The Defence disputes that there is good cause.

7. The Chamber reiterates that the Prosecution's inability to review the full text of the judgement during the pronouncement does not constitute good cause. The Prosecution would not have been in a better position if the entire judgement had been made available at the end of the hearing after the summary had been read out.<sup>6</sup> The Chamber has previously accepted that a change in the composition of the Prosecution team for the purpose of a possible appeal constituted good cause in a complicated multi-accused case.<sup>7</sup> It finds that a measure of reflection, based on a careful reading of the summary, may also be justified in a single-accused trial. In the present case, the Prosecution filed its request only two days after the pronouncement of the judgement, and the requests only seeks temporary travel restriction and a reporting requirement, not detention. The Chamber therefore finds that there is good cause to consider the request in spite of the delay.

8. The Prosecution argues that there is a risk that Nsengimana may flee the Tribunal's jurisdiction. He did not voluntarily surrender and was arrested in Cameroon following difficulty and expense. The Defence suggests that Nsengimana voluntarily surrendered to the national authorities, that he is not a flight risk as he resides in a Tribunal safe house, and that the Registry holds his travel documents. The Defence undertakes to keep the Chamber aware of changes in his situation.

9. The Chamber notes that Nsengimana is already subject to *de facto* restrictions on his movements. The Registry has confirmed that he remains in the Tribunal's accommodation while living in a safe house, and that no third country has been identified by the Registry to receive him. This may take some time.<sup>8</sup> In the Chamber's view, the Prosecution has not identified any concrete risk that Nsengimana will flee and become unavailable if the Prosecution files a notice of appeal.

10. This said, it is in the interest of justice that Nsengimana be available and accessible in the event of continued proceedings against him. Consequently, if there is a change in his present residence before the expiration of the period for filing a notice of appeal, Nsengimana should keep the Tribunal as well as his counsel fully informed of his whereabouts.

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<sup>4</sup> *Bagosora et al.*, Decision on Prosecution Motion to Impose Conditions on Kabiligi's Liberty (TC), 31 December 2008, para. 4 ("*Kabiligi* Decision"), citing *In re André Ntagerura*, Decision on Motion for Leave to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008 (AC), 11 September 2008, para. 13; *Rwamakuba*, Decision on Appropriate Remedy (TC), 31 January 2007 (the Trial Chamber held separate proceedings following the issuance of the judgement concerning an appropriate remedy for certain violations of his fair trial rights); *Rwamakuba*, Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 26 (affirming the Trial Chamber's exercise of jurisdiction after pronouncement of judgement).

<sup>5</sup> *Kabiligi* Decision para. 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* para. 8, citing *In re André Ntagerura*, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008 (AC), 18 November 2008, para. 2.

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**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the motion, in part;

**REQUESTS** Hormisdas Nsengimana to inform the Tribunal and his counsel of his whereabouts in the event that there is a change in his present residence before the expiration of the period for filing a notice of appeal;

**DENIES** the motion in all other respects.

Arusha, 24 November 2009



Erik Møse  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Florence Rita Arrey  
Judge

[Seal of the Tribunal]

