



UNITED NATIONS
NATIONS UNIES

ICTR-05-82-1
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(1735 - 1732)

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**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: 11 February 2010

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-T

**DECISION ON DEFENCE MOTION FOR AN EXTENSION OF TIME FOR THE
FILING OF ITS CLOSING BRIEF**

Rules 54 and 86 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Charles Adeogun-Phillips
Thembile Segoete

Counsel for the Defence:
Maroufa Diabira
Dorothee Le Fraper du Hellen

[Signature]

INTRODUCTION

- 1. On 26 May 2009, the Prosecution closed its case after calling 12 witnesses over 12 trial days. The Defence concluded its case on 17 December 2009 after calling 23 witnesses over 21 trial days.¹ On 18 December 2009, the Chamber ordered that the Parties file their closing briefs by close of business on 25 February 2010 and scheduled closing arguments for 12 and 13 April 2010.²
- 2. On 3 February 2010, the Chamber notified the Parties that a *proprio motu* site visit would take place during the week commencing 26 April 2010, and should they wish to file submissions regarding the site visit, they should do so by close of business on 19 February 2010. The Parties were also informed that closing arguments would be postponed until after the site visit and a scheduling order would be issued in due course.³
- 3. On 4 February 2010, the Defence filed a motion requesting an extension of time for the filing of its closing brief until 25 March 2010, one month after the Prosecution.⁴
- 4. The Prosecution did not respond to the Defence Motion.

DISCUSSION

- 5. Rule 86 (B) of the Rules of Procedure and Evidence (“Rules”) provides that a party shall file a final trial brief with the Trial Chamber not later than five days prior to the day set for the presentation of that party’s closing argument. There is no provision in either the Statute, or the Rules, to suggest that the Defence should file its closing brief after the Prosecution.
- 6. The Defence submits that according to the right to a fair trial, as guaranteed by Articles 19 and 20 of the Tribunal’s Statute,⁵ the Defence should be allowed to respond to the Prosecution closing brief and if compelled to file its brief at the same time, the Accused would suffer prejudice which would not be remedied through the filing of a reply.⁶ In support, the Defence states that the Prosecution evidence included a number of allegations which are not included in the Indictment. The Defence argues that the Prosecution should therefore be required to file its closing brief first so that the Defence knows to what extent the Prosecution intends to rely on those allegations.⁷ According to the Defence, the dominant

¹ The Defence case commenced on 23 September 2009, and adjourned on 9 October 2009 until 17 November 2009. The Defence case adjourned again from 23 November 2009 and resumed on 8 December 2009.

² Scheduling Order for Filing of Closing Briefs and Hearing of Closing Arguments, 18 December 2009.

³ Email correspondence dated 3 February 2010 from the Chamber to Prosecution and Defence Counsel.

⁴ Requête de la Défense aux Fins de Report du Délai Fixé pour le Dépôt du Mémoire Final de la Défense, 4 February 2010 (“Defence Motion”).

⁵ Defence Motion, paras. 2-6. The Defence relies on Article 19 (1) which provides that Trial Chamber shall ensure a trial is fair and expeditious and that proceedings are conducted with full respect for the rights of the accused. The Defence also relies on Article 20 (2) which provides for a fair and public hearing and Article 20 (4)(b) which provides for the accused’s right to adequate time to prepare his or her case.

⁶ Defence Motion, paras. 8-21. The Defence further submits that it requires additional time for the filing of its closing brief in order to allow for translation of the Prosecution’s closing brief from English to French for the Accused and Lead Counsel. See Defence Motion, paras. 25-28.

⁷ Defence Motion, paras. 12-18.

practice of the Tribunal has been to allow the Defence to file its closing brief after the Prosecution.⁸

7. The Defence further submits that the time given by the Chamber for filing of closing briefs was insufficient due to the intervening Christmas period. It also states that as the Defence closing brief will be in French, time is required to translate portions written in English by the English Legal Assistant.⁹ The Defence says that it is also preparing submissions for the *proprio motu* site visit, which are to be filed by 19 February 2010.¹⁰ It further submits that allowing additional time for the filing of its closing brief will not impact on the expeditious conduct of the proceedings.¹¹

8. With regard to the Defence submission that it should be allowed to file its closing brief after the Prosecution, the Chamber recalls there is no such requirement under the Statute, or the Rules. Indeed, the Appeals Chamber has held that the purpose of the closing brief is not to respond to the other party's brief, but to express its own position regarding the charges set out in the Indictment and the evidence led in the case.¹² The Appeals Chamber has further held that the simultaneous filing of closing briefs does not cause any impropriety.¹³ Moreover, contrary to the Defence submission, the practice of many Trial Chambers at both this Tribunal, and the International Criminal Tribunal for the Former Yugoslavia, has been to order the simultaneous filing of closing briefs, after considering the circumstances of the case.¹⁴ Accordingly, the Chamber finds that the order requiring the Parties to file their closing briefs at the same time does not cause any prejudice to the Accused.

9. With respect to the Defence submission that the Chamber did not allow sufficient time to prepare its closing brief and that it requires an additional month, the Chamber notes that the Parties were afforded over two months after close of the Defence case to file their closing briefs. Regardless of the intervening Christmas period, the Chamber considers this should have been sufficient time, particularly considering that this is a single accused case with only three counts (of which one is in the alternative), and 35 witnesses were heard over a period of 33 trial days.

10. However, considering that (i) the Defence requires additional time to prepare its closing brief, partly as it is also preparing submissions in relation to the site visit, and (ii) granting an extension of time will not affect the expeditious conduct of the proceedings since oral closing arguments are to be postponed until after the site visit, the Chamber considers it in the interests of justice to grant the extension of time requested by the Defence.

FOR THESE REASONS THE CHAMBER

GRANTS the Defence Motion; and

⁸ Defence Motion, paras. 40-48.

⁹ Defence Motion, paras. 29-31.

¹⁰ Defence Motion, paras. 32-37.

¹¹ Defence Motion, paras. 38-39.

¹² *Prosecutor v. Semanza*, Case No-ICTR-97-20-A, Judgment (AC), 20 May 2005, para. 36.

¹³ *Ibid.*

¹⁴ *Ibid.*

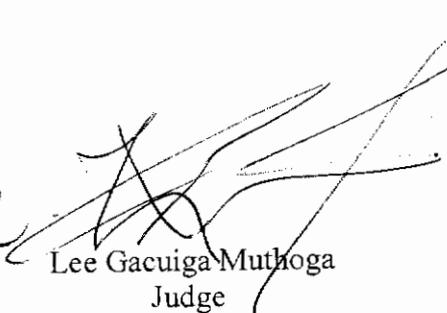


ORDER that the date for the filing of the Defence closing brief is extended to close of business on 25 March 2010.

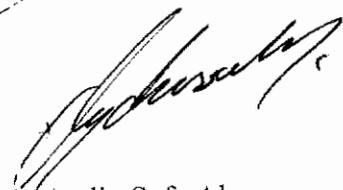
Arusha, 11 February 2010



Khalida Rachid Khan
Presiding Judge



Lee Gacuiya Muthoga
Judge



Aydin Sefa Akay
Judge

[Seal of the Tribunal]

