

ICTR-05-82-T
19-2-2010
(1742-1739)

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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: 19 February 2010

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON PROSECUTION MOTION FOR EQUALITY OF ARMS
FOLLOWING THE TRIAL CHAMBER'S DECISION ON THE 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 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 2010.¹ 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, that closing arguments would therefore be postponed until after the site visit, and a scheduling order would be issued in due course.²

2. By way of motion filed on 4 February 2010, the Defence requested an extension of time for the filing of its closing brief until 25 March 2010.³ The Defence Motion set out reasons for, among other things, the additional time required. The Prosecution did not respond to the Defence Motion.

3. On 11 February 2010, the Chamber issued a Decision which noted the Defence reasons for an extension of time.⁴ The Chamber found that it was in the interests of justice to grant the Defence Motion, considering that (i) the Defence required additional time to prepare its closing brief, and (ii) granting an extension of time would not affect the expeditious conduct of the proceedings since oral closing arguments are to be postponed until after the site visit.⁵ The date for filing of the Defence closing brief was therefore extended to 25 March 2010.

4. On 15 February 2010, the Prosecution filed a motion requesting the same extension of time based on the principle of equality of arms.⁶ The time limit for the Defence to file its response has not yet expired. However, the Chamber considers it unnecessary to wait for the Defence response before rendering its Decision on the Prosecution 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 or that closing briefs must be filed at the same time.

6. The Prosecution submits that it has taken all practical steps to ensure that it complies with the deadline of 25 February 2010 and that it does not require additional time to file its closing brief.⁷ It however submits that maintaining the original deadline is not in the interests

¹ Scheduling Order for Filing of Closing Briefs and Hearing of Closing Arguments, 18 December 2009. The Defence case closed on 17 December 2009.

² Email correspondence dated 3 February 2010 from the Chamber to Prosecution and Defence Counsel.

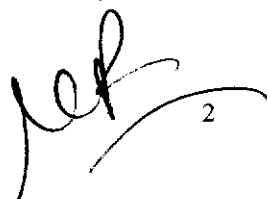
³ Requête de la Défense aux Fins de Report du Délai Fixé pour le Dépôt du Mémoire Final de la Défense, 4 February 2010 ("Defence Motion").

⁴ Decision on the Defence Motion for an Extension of Time for Filing of its Closing Brief, 11 February 2010 ("Decision of 11 February 2010").

⁵ Decision of 11 February 2010, para. 10.

⁶ The Prosecutor's Motion for Equality of Arms Following the Trial Chamber's Decision on the Defence Motion for an Extension of Time for the Filing of its Closing Brief, 15 February 2010 ("Prosecution Motion").

⁷ Prosecution Motion, para. 6.


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of justice and will result in an unfair advantage to the Defence.⁸ The Prosecution argues that having granted the Defence an extension of time, the interests of justice and the doctrine of equality of arms require the Chamber to grant a similar extension to the Prosecution.⁹ It also submits that the practice of the Tribunal has been to order the simultaneous filing of closing briefs.¹⁰

7. The Prosecution further refers to the reasoning of the Appeals Chamber in the *Semanza* case that the purpose of a closing brief is “not to respond to the other party’s closing brief, but to express its own position regarding the charges set out in the indictment and the evidence led in the case.”¹¹ The Prosecution submits that the purpose is not to afford one party the opportunity to conduct a critique of the other party’s brief.¹²

8. The Chamber recalls that the principle of equality of arms is a feature of the right to a fair trial as guaranteed by Articles 19 (1) and 20 (2) of the Tribunal’s Statute.¹³ As held by the Appeals Chamber, it ensures that “neither party is put at a disadvantage when presenting its case.”¹⁴ More specifically, the principle of equality of arms requires that each party has “equal access to the processes of the Tribunal” or “an equal opportunity to seek procedural relief where relief is needed.”¹⁵ In relation to requests for an extension of time, either party may apply for such relief which will be granted where a Trial Chamber is satisfied that the moving party has demonstrated good reasons for the relief sought.

9. In the present case, the Defence advanced reasons for why it required an extension of time. The Prosecution, however, does not require additional time. Rather, it requests an extension because the Defence was granted an extension and links this to the principle of equality of arms. The Chamber observes that, as articulated by the Appeals Chamber, the Prosecution is reading “into the right to equality of arms a right to equality of relief, even when the circumstances are quite different in each case and provide no basis whatsoever for granting equal relief.”¹⁶

10. Furthermore, the Prosecution has not shown what disadvantage it suffers by filing its closing brief before the Defence. While the Chamber acknowledges that the Defence will have sight of the Prosecution closing brief before filing its own, this does not cause any prejudice to the Prosecution because, as noted in paragraph 7 above, the purpose of the

⁸ Prosecution Motion, para. 7.

⁹ Prosecution Motion, para. 8.

¹⁰ Prosecution Motion, para. 10.

¹¹ *Prosecutor v. Semanza*, Case No-ICTR-97-20-A, Judgment (AC), 20 May 2005, para. 36.

¹² Prosecution Motion, para. 10.

¹³ Article 19 (1) provides that Trial Chambers shall ensure that 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. Article 20 (2) ensures the right to a fair and public hearing. In addition, Article 20 (4) (e) is premised on the principle of equality of arms as it provides for the right to examine, or have examined, the witnesses against him and to obtain attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. See also *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment (AC) (“Tadic AC Judgment”), paras. 43-48, in which the Appeals Chamber cites several cases brought before regional and international human rights bodies with respect to the principle of equality of arms within the context of the right to a fair trial.

¹⁴ Tadic AC Judgment, para. 48.

¹⁵ *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2-A, Decision on Application by Mario Cerkez for Extension of Time to File his Respondent’s Brief (AC), 11 September 2001 (“Kordic and Cerkez AC Decision”), para. 7.

¹⁶ Kordic and Cerkez AC Decision, para. 9.

closing brief is not to respond to the other party's brief. In addition, contrary to the Prosecution submission, the practice of this Tribunal is not always to order the simultaneous filing of closing briefs.¹⁷

11. Accordingly, the Chamber finds that the Prosecution argument based on the principle of equality of arms is misconceived since it had the same right as the Defence to apply for appropriate relief but did not do so because it does not require additional time to finalise its closing brief. Furthermore, it suffers no disadvantage as a result of filing its closing brief before the Defence. The Prosecution Motion is therefore without merit.

FOR THESE REASONS THE CHAMBER

DENIES the Prosecution Motion.


Arusha, 19 February 2010



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge



¹⁷ See for example, *Prosecutor v. Bizimungu et. al.*, Case No. ICTR-99-50-T, *Prosecutor v. Bagosora et. al.*, Case No. ICTR-98-41-T; *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-T; *Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T.