

ICTR-99-54-T
15-04-10
(5912-5910)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 15 April 2010

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVES
2010 APR 15 11:23

**DECISION ON DEFENCE MOTION FOR RECONSIDERATION, OR, IN THE
ALTERNATIVE, CERTIFICATION TO APPEAL THE ORAL DECISION OF 18
MARCH 2010**

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. William Egbe
Mr. Patrick Gabaake
Mr. Iskandar Ismail
Ms. Faria Rekkas

Defence Counsel

Mr. Peter Herbert
Ms. Mylène Dimitri
Mr. Deogratias Sebureze
Ms. Anne-Gaëlle Denier

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa and Mparany Rajohnson (the "Chamber");

BEING SEIZED of the "Defence Motion for Reconsideration, or, in the Alternative, Certification to Appeal the Trial Chamber's Oral Decision Rendered on 18 March 2010", filed on 24 March 2010 (the "Motion");

CONSIDERING

- (a) the "Prosecutor's Response to Defence Motion for Reconsideration, or, in the Alternative, Certification to Appeal the Trial Chamber's Oral Decision Rendered on 18 March 2010, filed confidentially on 29 March 2010 (the "Response"); and
- (b) the "Defence Reply to the Prosecutor's Response to Defence Motion for Reconsideration, or in the Alternative, Certification to Appeal the Trial Chamber's Oral Decision Rendered on 18 March 2010", filed on 1 April 2010 (the "Reply");

CONSIDERING also the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the Motion pursuant to Rule 73 of the Rules.

INTRODUCTION

1. On 18 March 2010, the Chamber adjourned the proceedings until 21 June 2010, when it planned to hear the evidence of Prosecution Witness ANAC. The Chamber stated that, after the Witness provides his evidence, the Defence case would commence. This arrangement was made contingent upon the availability of Witness ANAC and upon further possible submissions by the Parties.¹

SUBMISSIONS OF THE PARTIES

Defence

2. The Defence submits that, on 18 March 2010, the Chamber erred in scheduling the Defence case immediately after the close of Witness ANAC's testimony. It requests reconsideration of this schedule or, alternatively, certification to appeal it.²

¹ T. 18 March 2010 pp. 81-82.
² Motion, paras. 17-86; Reply, paras. 1, 6-13, 1.

Prosecution

3. The Prosecution responds that the Chamber never fixed a date for the commencement of the Defence case, and therefore disputes that the Chamber made a Decision which could be impugned. The Prosecution prays for a dismissal of the Motion on the grounds that it is premature.³

DELIBERATIONS

4. On 15 April 2010, the Chamber clarified its earlier directive through a Scheduling Order. In it, the Chamber explained that, if the Prosecution confirms that Witness ANAC will be present to testify starting on 21 June 2010, then the Defence case shall be scheduled to start on or around 11 October 2010.⁴

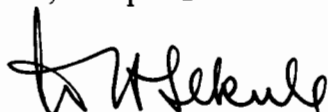
5. The Chamber notes that the Defence requests at least three months between the end of the Prosecution's case and the start of the Defence's. The Defence submits no argument to support this time period, but merely places it in the prayer for relief.⁵ As such, the Chamber considers this request to be unsubstantiated.

6. The Chamber recalls its Decision on Trial Date, which allowed for a break "not exceeding two months" between the Prosecution and Defence case.⁶ Under the Scheduling Order of 15 April 2010, if the Prosecution informs the Chamber on or before 30 April 2010 that Witness ANAC will be unavailable to testify, then the Defence will have almost two months before the commencement of its case on 21 June 2010. However, if Witness ANAC is to testify as scheduled starting on 21 June 2010, then the Defence will have more time before its case starts on or around 11 October 2010. Accordingly, the Motion is moot.

FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Motion as moot.

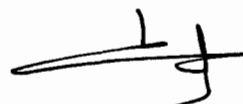
Arusha, 15 April 2010



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

³ Response, paras. 4-8.

⁴ Scheduling Order Pursuant to Rule 54 of the Rules of Procedure and Evidence (TC), 15 April 2010, p. 3.

⁵ Reply, para. 15.

⁶ Decision on Trial Date (TC), 12 June 2009, para. 56.