



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T
03-06-2010
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Ivan

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 3 June 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON DEFENCE MOTION FOR RECONSIDERATION OF THE TRIAL
CHAMBER'S DECISION OF 16 APRIL 2010**
Rules 73(B) of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 30 March 2010, the Defence filed a Motion requesting that the Trial Chamber postpone the start of its case. The request was based primarily on difficulties the Defence was encountering in obtaining information from the Government of France ("France") with respect to the alibi defence of the Accused.¹

2. On 8 April 2010, the Trial Chamber issued a Decision² denying the Defence Motion, and concluding that there were alternate remedies available such as rescheduling alibi witnesses to a later stage of the Defence case.³

3. On 12 April 2010, the Defence filed Motion requesting that the Trial Chamber reconsider or certify for appeal the 8 April Decision. The Defence took specific issue with what it deemed to be an instruction setting dates to hear alibi witnesses.⁴

4. At a Status Conference held on 14 April 2010, the Trial Chamber ruled that the Defence could call its alibi witnesses at any time during the defence case.⁵

5. On 16 April 2010, the Trial Chamber issued a Decision concluding that the 12 April Defence Motion was moot.⁶

6. On 20 April, the Defence filed the instant Motion seeking Reconsideration of the Impugned Decision.⁷

¹ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Nzabonimana's Urgent Motion for Postponement of the Commencement of the Defence, 30 March 2010 ("30 March Motion").

² *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana's Urgent Motion for Postponement of the Commencement of the Defence, 8 April 2010 ("8 April Decision").

³ 8 April Decision, para. 18.

⁴ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Nzabonimana's Motion for Reconsideration or Certification of the "Decision on Nzabonimana's Urgent Motion for Postponement of the Commencement of the Defence," 12 April 2010 ("12 April Motion").

⁵ T. 14 April 2010, pp-29-30,

⁶ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Decision on Nzabonimana's Motion for Reconsideration and/or Certification to Appeal the Decision of 8 April 2010, 16 April 2010 ("Impugned Decision").

⁷ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Nzabonimana's Motion for Reconsideration of the "Decision on Nzabonimana's Motion for Reconsideration and/or Certification to Appeal the Decision of 8 April 2010," 20 April 2010 ("Instant Motion").

7. On 22 April 2010, the Prosecution filed a Response to the instant Motion.⁸

Submissions of the Parties

8. In the Instant Motion, the Defence submits that the Trial Chamber's ruling during the 14 April 2010 Status Conference, with respect to the scheduled hearing of alibi witnesses, did not render moot that section of its 12 April Motion seeking leave to appeal the Trial Chamber's Decision denying postponement of the Defence case.⁹ It contends that in its 12 April Motion, the Defence made two separate requests: a) that the Trial Chamber reconsider its 8 April Decision instructing the Defence to schedule its alibi witnesses for the last two weeks of trial; and b) that the Trial Chamber certify for appeal that section of the 8 April Decision denying postponement of the start of the Defence case.¹⁰ The Defence refers to the arguments in its 12 April Motion to bolster the Instant Motion.¹¹

9. In the 12 April Motion, the Defence argued that it could not simultaneously present its evidence in Arusha while conducting investigations into potential alibi witnesses in France on the basis of recently received information from the Government of France. Thus, the 30 March Decision impacted the ability of the Defence to obtain potential Defence witnesses, and hence affected the fair conduct of proceedings.¹² The Defence further argued that it was crucial that it be allowed to conduct its investigations before "the end of this trial."¹³

10. The Prosecution, in its Response, notes at the outset that the issue involving those alibi witnesses who may emerge on the basis of the 16 March 2010 disclosure of new documents by the French government is "still live."¹⁴ The Prosecution opposes the Defence Motion for leave to appeal the 8 April Decision, arguing that rather than advance proceedings, a decision to grant the Defence request would only "initiate an indefinite perpetuation of litigation."¹⁵

11. The Prosecution further contends that the Defence has requested the exceptional measure for interlocutory certification to certify an interlocutory appeal where "appropriate, alternative and

⁸ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Prosecutor's Response Nzabonimana's Motion for Reconsideration of the "Decision on Nzabonimana's Motion for Reconsideration and/or Certification to Appeal the Decision of 8 April 2010", 22 April 2010 ("Prosecution Response").

⁹ Instant Motion, paras 10, 18-21.

¹⁰ Instant Motion, para. 11.

¹¹ Instant Motion, para. 21.

¹² 12 April Motion, paras 27- 30.

¹³ 12 April Motion, paras 36-42.

¹⁴ Prosecution Response, para. 20.

¹⁵ Prosecution Response, paras 24-27.

practicable” options exist.¹⁶ In particular, it considers the Defence Motion to be premature as the current session of the Trial is still ongoing. Instead of granting certification, the Defence proposes that the Trial Chamber hold a Status Conference later in the session to assess progress made by the Defence in obtaining Defence witnesses and to discuss potential rebuttal testimony.¹⁷ Finally, the Prosecution submits that proceedings cannot be stalled indefinitely until alibi witnesses become available.¹⁸ The Prosecution concludes that the Defence has not met the criteria for certification to appeal the Impugned Decision.¹⁹

DELIBERATIONS

Applicable Law

Reconsideration

12. As this Tribunal has acknowledged in *Karemera*, it is the established jurisprudence of the Tribunal that Trial Chambers have the “inherent power” to reconsider their own decisions, under the following “exceptional” circumstances:

- i. when a new fact has been discovered that was not known by the Trial Chamber;
- ii. where new circumstances arise after the original decision;
- iii. where there was an error of law or an abuse of discretion by the Trial Chamber resulting in an injustice.²⁰

Certification

13. Rule 73 (B) states:

Decisions rendered on [Trial Chamber] motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

The jurisprudence of this Tribunal further establishes that Certification is an “exceptional” remedy that remains within the absolute discretion of the Trial Chamber. As was noted in *Ntahobali*, “Rule

¹⁶ Prosecution Response, para.37 (iii-iv).

¹⁷ Prosecution Response, paras 28-30, 37 (ii), 48-49.

¹⁸ Prosecution Response, paras 39-42.

¹⁹ Prosecution Response, paras 31, 50.

²⁰ See e.g., *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera*, Decision on Reconsideration of Protective Measures for Prosecution Witnesses, 30 October 2006, para. 2; *Karemera*, Decision on Reconsideration of Admission of Written Statements in lieu of Oral Testimony and Admission of the Testimony of Prosecution Witness GAY, 28 September 2007, paras. 10-11.

73(B) of the Rules provides... that in exceptional circumstances, the Trial Chamber may—not must—allow interlocutory appeals of [its] decisions”.²¹

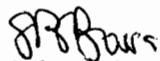
The Impugned Decision


14. The Trial Chamber considers that all Defence submissions regarding the start date of the Defence case were predicated on the issue of French cooperation and its impact on potential alibi witnesses.²² The Trial Chamber addressed these issues in its Decision of 8 April and at the Status Conference held on 14 April 2010. If the Defence had other arguments to support postponement of the start of the Defence case, it did not clearly articulate them. Therefore, the Trial Chamber concludes that the Defence has not established a basis for reconsidering the Impugned Decision.

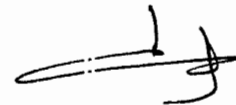
FOR THESE REASONS, THE TRIAL CHAMBER

DENIES the Motion in its entirety.

Arusha, 3 June 2010, done in English.


Solomon Balungi Bossa
Presiding Judge


Bakhtiyar Tuzmukhamedov
Judge


Mparany Rajohnson
Judge

[Seal of the Tribunal]



²¹ *Prosecutor v. Ntahobali et al.*, ICTR-97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 18 March 2004, paras. 13-15.

²² 8 April Decision, para. 18: "The Trial Chamber notes that the Defence received information from France recently, which may be relevant to an alibi Defence, and that the Defence may therefore wish to extend its investigations on the basis of this information. Yet, as the Prosecution notes in its Response and the Defence appears to concede in its Reply, postponement of the Defence case is not the only remedy available at this stage of the proceedings. The Trial Chamber considers that in the circumstances, alternative and appropriate remedies are available to the Defence such as the rescheduling of the testimony of the alibi witnesses to the last two weeks of the Defence case. It further notes that the Defence case is not scheduled to close until 4 June 2010 which will allow the Defence adequate time to conduct its investigations. Accordingly, the Trial Chamber directs the Defence to reschedule the testimony of its alibi witnesses to the last two weeks of its case." See also T. 14 April 2010, pp. 29-30.