



UNITED NATIONS  
NATIONS UNIES

ICTR-00-55C-T  
16-03-2011  
(5583-5580)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

5583  
Am

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Lee Gacuiga Muthoga, *Presiding*  
Seon Ki Park  
Robert Fremr

**Registrar:** Adama Dieng

**Date:** 16 March 2011

**THE PROSECUTOR**

v.

**Ildéphonse NIZEYIMANA**

**CASE NO. ICTR-00-55C-T**

**DECISION ON DEFENCE MOTION FOR JUDGEMENT  
OF ACQUITTAL PURSUANT TO RULE 98bis OF THE RULES**

**Office of the Prosecution:**

Drew White  
Kirsten Gray  
Yasmine Chubin  
Zahida Virani

**Defence Counsel for Ildéphonse Nizeyimana:**

John Philpot  
Cainnech Lussiaà-Berdou  
Myriam Bouazdi

## INTRODUCTION

1. On 4 March 2011, the defence team of the accused, Ildéphonse Nizeyimana, ("Defence" and "the Accused" respectively) filed a motion seeking a judgement of acquittal with respect to certain paragraphs<sup>1</sup> of the indictment which set out charges against the Accused.<sup>2</sup> More specifically, the Defence submits that the Office of the Prosecutor ("Prosecution") failed to adduce any evidence with respect to the allegations contained in paragraphs 10 (ii), 10 (iii), 10 (v), 33 and 34 of the Indictment.<sup>3</sup> On this basis, it requests that the Chamber either enter a judgment of acquittal with respect to these paragraphs or declare that it will not take the allegations contained therein into account.<sup>4</sup>

2. On 9 March 2011, the Prosecution filed a response to the Motion.<sup>5</sup> The Prosecution contends that as a legal matter, the Motion should be dismissed because it focuses on specific paragraphs rather than particular counts.<sup>6</sup> The Prosecution acknowledges that it did not lead evidence with respect to paragraphs 33 and 34 of the Indictment, and "withdraws" them.<sup>7</sup> By contrast, the Prosecution contests the Defence's submission that no evidence was led with respect to paragraphs 10 (ii), 10 (iii) and 10 (v) of the Indictment.<sup>8</sup>

## DELIBERATIONS

4. Rule 98bis of the Rules of Procedure and Evidence ("Rules") states:

If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber, on motion of an accused filed within seven days after the close of the Prosecution's case-in-chief, unless the Chamber orders otherwise, or *proprio motu*, shall order the entry of judgement of acquittal in respect of those counts.

Rule 98bis of the Rules therefore confers upon a Trial Chamber the power to enter a judgment of acquittal on any counts in an indictment where evidence is insufficient. Generally, this situation arises where Prosecution evidence is incapable of belief, or where

<sup>1</sup> Defence Motion for Judgement of Acquittal Pursuant to Rule 98bis of the Rules, filed on 4 March 2011 ("Motion"), p. 9.

<sup>2</sup> Second Amended Indictment, filed on 17 December 2010 ("Indictment").

<sup>3</sup> Motion, paras. 10-19.

<sup>4</sup> Motion, p. 9.

<sup>5</sup> Prosecutor's Response to Defence Motion for Judgement of Acquittal Pursuant to Rule 98bis of the Rules, filed on 9 March 2011 ("Response"). The Chamber notes that the Defence did not file a reply.

<sup>6</sup> Response, paras. 8-15, 44.

<sup>7</sup> Response, para. 5.

<sup>8</sup> Response, paras. 21-42.

even if all evidence adduced by the Prosecution is assumed to be true, a conviction is still not possible.<sup>9</sup>

5. In considering motions filed under Rule 98bis of the Rules, chambers have generally held that the rule involves analysis of individual counts rather than paragraphs of a given indictment.<sup>10</sup> The Chamber observes that several trial chambers' 98bis decisions have also suggested that a paragraph by paragraph analysis of an indictment would draw them into unwarranted substantive evaluation of Prosecution evidence.<sup>11</sup>

6. The Chamber acknowledges that in the case of *Prosecutor v. Ngirabatware*,<sup>12</sup> the trial chamber held that in some exceptional circumstances, a paragraph-based approach to 98bis motions might be adopted.<sup>13</sup> However, in that case the relevant chamber declined to implement this approach,<sup>14</sup> and its view on the potential acceptability of a paragraph-based approach is unsupported by precedent<sup>15</sup> and thus in sharp contradiction to other chambers' 98bis decisions. Given the plain language of Rule 98bis of the Rules, which references counts rather than paragraphs, the Chamber sees no reason to depart from the general precedent, and will only consider whether the Prosecution's evidence is insufficient to sustain particular counts of an indictment.

7. The Chamber observes that the paragraphs highlighted in the Motion do not encompass entire counts. By definition, the arguments advanced by the Defence are thus insufficient to enter a judgement of acquittal with respect to any count of the Indictment.<sup>16</sup>

#### FOR THESE REASONS, THE CHAMBER

**DENIES** the Motion.

<sup>9</sup> See *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Judgement, 5 July 2001, para. 37; *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T, Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98bis, 22 May 2007 ("Rukundo Decision"), para. 3; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motions for Judgement of Acquittal, 2 February 2005 ("Bagosora Decision"), para. 6.

<sup>10</sup> See, e.g., Rukundo Decision, para. 5; Bagosora Decision, paras. 8-9; *Prosecutor v. Rwamakuba*, Case No. ICTR-98-44C-R98bis, Decision on Defence Motion for Judgement of Acquittal, 28 October 2005 ("Rwamakuba Decision"), para. 8.

<sup>11</sup> See, e.g., Rukundo Decision, para. 5; Rwamakuba Decision, para. 8; Bagosora Decision, para. 9.

<sup>12</sup> Case No. ICTR-99-54-T.

<sup>13</sup> See *Prosecutor v. Ngirabatware*, Case No. ICTR-99-54-T, Decision on Defence Motion for Judgement of Acquittal, 14 October 2010 ("Ngirabatware Decision"), para. 28.

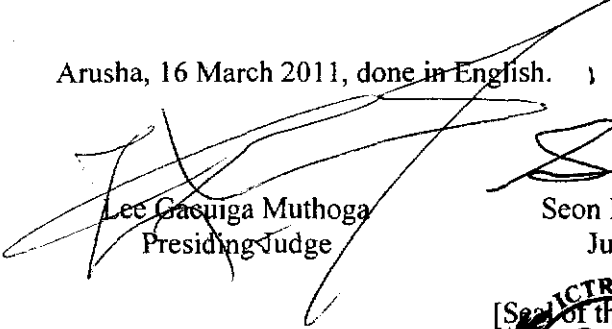
<sup>14</sup> Ngirabatware Decision, para. 29.

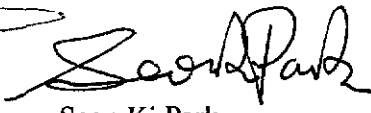
<sup>15</sup> See Ngirabatware Decision, para. 28.

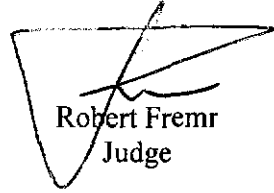
<sup>16</sup> The Chamber notes that as the Prosecution has acknowledged failing to lead any evidence with respect to the allegations in paragraphs 33 and 34 of the Indictment, it is not necessary for the Defence to adduce evidence refuting the allegations contained in these two paragraphs.

5580

Arusha, 16 March 2011, done in English. )

  
Lee Gacunga Muthoga  
Presiding Judge

  
Seon Ki Park  
Judge

  
Robert Fremr  
Judge

