



ICTR-05-89-I
17-01-2012
(475-473)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

475
ⓐ

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, Presiding
Lee Gacuga Muthoga
Seon Ki Park

Registrar: Adama Dieng

Date: 17 January 2012

THE PROSECUTOR
v.
Bernard MUNYAGISHARI

Case No. ICTR-2005-89-I

JUDICIAL RECORDS/ARCHIVES
UNICTR
RECEIVED

2012 JAN 17 P 3:14
Philippe Moriceau

**DECISION ON DEFENCE REQUEST TO DELAY ITS RESPONSE TO THE
RULE 11BIS MOTION**

Office of the Prosecutor
Hassan Bubacar Jallow
James J. Arguin
George Mugwanya
Inneke Onsea
Abdoulaye Seye
François Nsanzuwera

Counsel for the Accused
Philippe Moriceau
Majda Dautović
Natacha Fauveau-Ivanović

ⓐ

474

INTRODUCTION

1. On 3 October 2011, the Prosecution requested that a Trial Chamber be designated to adjudicate an anticipated motion pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence.¹ On 13 October 2011, the President of the Tribunal designated Trial Chamber III, composed of Judges Khalida Rachid Khan, Presiding, Lee Gacuiga Muthoga and Seon Ki Park (the "Chamber") to adjudicate the anticipated Rule 11 *bis* motion.²

2. On 26 October 2011, the Chamber issued a scheduling order directing that the Prosecution file its anticipated Rule 11 *bis* motion within 14 days ("Scheduling Order").³ The Scheduling Order also compelled the Defence to "file a response 30 days after the filing of the anticipated Rule 11 *bis* motion and any accompanying annexes in French".⁴

3. On 9 November 2011, the Prosecution filed a request, pursuant to Rule 11 *bis* of the Rules, to transfer the case of *The Prosecutor v. Bernard Munyagishari*, ICTR Case No. 2005-89-I to the Republic of Rwanda ("11 *bis* Motion").⁵ The 11 *bis* Motion and annexes A through D, F, H through J, L through R contained English text without accompanying French translations. Annexes E and G contained French translations and annex K was submitted in French.

4. On 23 December 2011, the Court Management Section transmitted to the Chamber, the Defence and Prosecution French translations of the 11 *bis* Motion and accompanying annexes B through D, F, H, I, O, P and R ("23 December 2011 Transmission"). French translations of annexes A, J, L through N and Q were omitted.

5. In the present motion, filed on 6 January 2012, the Defence states that the 23 December 2011 Transmission was incomplete because it failed to include the French translations of annexes K and Q of the 11 *bis* Motion. They were subsequently received on 4 January 2012 (the "Motion").⁶ Consequently, it requests that the deadline to file its response to the 11 *bis* Motion run from 4 January 2012.⁷ The Prosecution does not oppose this request.

DISCUSSION

6. The Chamber observes that annex K was transmitted in French to the Defence on 9 November 2011 with the 11 *bis* Motion. Consequently, no translation of annex K was

¹ Prosecutor's Request for the Referral of the Case of Bernard Munyagishari to Rwanda Pursuant [sic] Rule 11 *bis* of the Rules of Procedure and Evidence, 3 October 2011, para. 6. All further references are to the Tribunal's Rules of Procedure and Evidence unless otherwise indicated.

² Designation of a Trial Chamber to Consider the Prosecutor's Request for the Referral of the Case of Bernard Munyagishari to Rwanda (TC), 13 October 2011, p. 2.

³ Scheduling Order for Anticipated Rule 11 *bis* Motion (TC), 26 October 2011 ("Scheduling Order"), para. 6 and p. 5.

⁴ Scheduling Order, p. 5.

⁵ Prosecutor's Request for the Referral of the Case of Bernard Munyagishari to Rwanda pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 9 November 2011 ("11 *bis* Motion"), para. 96.

⁶ *Requête de la défense de Bernard Munyagishari aux fins de clarification du délai pour la réponse à la requête du Procureur déposé en application de l'[article] 11bis du Règlement*, 6 January 2012 (the "Motion").

⁷ Motion, paras. 3-4.

473

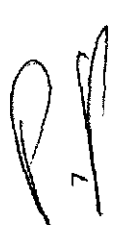
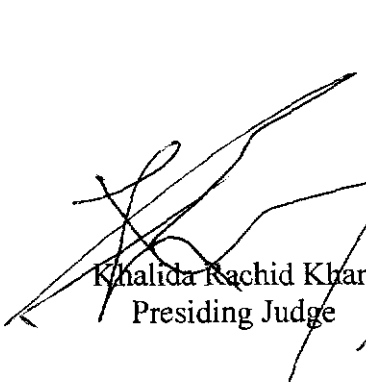
required in light of the Scheduling Order. Thus, the Defence's claim that the time to respond to the 11 *bis* Motion should be delayed, in part, due to the omission of a French translation of annex K is baseless.⁸

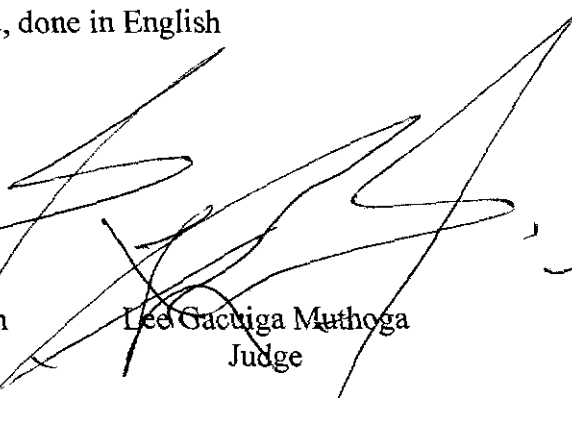
7. Finally, the French translations of the 11 *bis* Motion as well as the majority of the accompanying annexes were filed and transmitted to the Defence through the 23 December 2011 Transmission. The language of the Scheduling Order indicates that the 30 day limit to respond should run from the Defence's receipt of the 11 *bis* Motion and any accompanying annexes in French. The Defence submissions imply that the receipt of the French translations that are necessary to respond to the 11 *bis* Motion occurred on 4 January 2012.⁹ Consequently, Defence's timeline to file a response to the 11 *bis* Motion shall be 30 days after 4 January 2012.

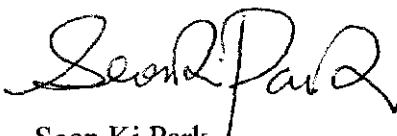
BASED ON THE FOREGOING, THE CHAMBER

GRANTS, IN PART, the Motion and orders the Defence to file its response to the 11 *bis* Motion 30 days after 4 January 2012.

Arusha, 17 January 2012, done in English



Khalida Rachid Khan
Presiding Judge


Lee Gacugira Muthoga
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]



⁸ Motion, para. 3. The Chamber reminds Defence Counsel that his conduct must have due regard to the fairness of proceedings as enshrined in Articles 12(1) and 13(1) of the Code of Professional Conduct for Defence Counsel. Representations tending to mislead the Chamber result in a waste of judicial resources and threaten the fairness of proceedings.

⁹ Motion, para. 4.