



ICTR-05-89-I
23-2-2012
(503-500)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, Presiding
Seon Ki Park
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 23 February 2012

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR
v.
Bernard MUNYAGISHARI

Case No. ICTR-2005-89-I

DECISION ON PROSECUTOR'S EXTREMELY URGENT REQUEST

Office of the Prosecutor

Hassan Bubacar Jallow
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Counsel for the Accused

Philippe Moriceau
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INTRODUCTION

1. On 9 November 2011, the Prosecution filed in English a request, pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence (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").¹ The Defence filed its response to the 11 *bis* Motion on 1 February 2012 ("Defence Response") and an addendum on 3 February 2012 ("Defence Addendum").² The Prosecution's current deadline to file a reply to the Defence Response and Defence Addendum is 24 February 2012.³
2. On 15 February 2012, the Defence filed a request that the Chamber admit an open letter to the President of the Tribunal, and an attached resolution from the International Association of Democratic Lawyers ("IADL") opposing the transfer of Bernard Munyagishari to Rwanda.⁴ On 16 February 2012, the Prosecution filed a response opposing the admission of the documents.⁵ On 20 February 2012, the Defence filed its reply.⁶ On 21 February 2012, the Chamber admitted the IADL letter and resolution.⁷
3. On 22 February 2012, the Prosecution filed an extremely urgent request for leave to file a reply to the IADL letter and resolution (the "Motion"). It argues that these documents raise new issues not included in the Defence Response or Defence Addendum. The Prosecution requests that it be given seven additional days to file a consolidated reply brief responding to the Defence Response, Defence Addendum and IADL letter and resolution. Alternatively, it requests that it be allowed to file a separate reply to the IADL letter and resolution seven days from the Chamber's decision on the Motion.⁸

¹ 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.

² *Réponse de la défense de Bernard Munyagishari à la requête du Procureur aux fins de renvoi de l'affaire Munyagishari au Rwanda en application de l'Article 11 bis du Règlement de Procédure et de Preuve*, 1 February 2012 ("Defence Response"). The complete Defence Response with accompanying annexes was circulated to the parties on 2 February 2011. *Addendum à la réponse de la défense de Bernard Munyagishari à la requête du Procureur aux fins de renvoi de l'affaire Munyagishari au Rwanda en application de l'Article 11 bis du Règlement de Procédure et de Preuve*, 3 February 2012 ("Defence Addendum").

³ See Decision on Prosecutor's Opposition to Additional Defence Submissions, 10 February 2012, p. 4 n. 15; Decision on Prosecutor's Request for Extension (TC), 2 February 2012, p. 4.

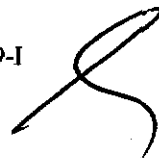
⁴ *Requête de la défense de Bernard Munyagishari aux fins d'accepter la lettre ouverte et la résolution de l'association international des juristes démocrates relative au renvoi de l'affaire Munyagishari au Rwanda*, 15 February 2012, para. 6.

⁵ Prosecutor's Response to Defence Request to Admit a Letter and Resolution of the International Association of Democratic Lawyers (IADL), 16 February 2012.

⁶ *Réplique de la défense de Bernard Munyagishari à la réponse du procureur a la requête de la défense aux fins d'accepter la lettre ouverte et la résolution de l'association international des juristes démocrates relative au renvoi de l'affaire Munyagishari au Rwanda*, 20 February 2012 ("Defence Reply").

⁷ Decision on Defence Request to Admit A Letter, 21 February 2012.

⁸ Prosecutor's Extremely Urgent Request for Directions and Leave to File a Response to Letter from International Association of Democratic Lawyers (IADL), 22 February 2012 (the "Motion").



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4. The Defence has not yet filed a response and the period to do so has not yet elapsed.⁹ However, the Chamber considers that the immediate adjudication of the Motion is in the interests of justice and will assist in the fair and expeditious conduct of proceedings.¹⁰

DISCUSSION

5. The Prosecution was made aware of the contents of the IADL letter and resolution as well as the possibility that it might become part of the record when the Defence moved to have them admitted on 15 February 2012. Notably, the Prosecution response contained no indication that additional time to respond to the IADL letter and resolution would be needed if the Chamber granted the Defence's motion. It now urgently requests a decision from this Chamber on this very issue.

6. Unforeseen circumstances may justify filings before the Chamber that are labeled as "Extremely Urgent". Failure of a party to prepare for foreseeable contingencies does not. The Chamber takes this opportunity to caution the parties that poor planning on their part does not create an emergency for this Bench. Future motions and or filings that are unnecessarily labeled as "Extremely Urgent" (or the like) may be considered both offensive and abusive and lead to sanctions pursuant to Rule 46 (A) of the Rules.¹¹

7. Turning to the merits of the Motion, the Prosecution has identified specific issues raised in the IADL letter and resolution that were not addressed in the Defence Response or Defence Addendum and that justify further delays in the filing of its reply. The Prosecution's current submissions should have been raised in their 16 February 2012 opposition to the admission of the IADL letter and resolution. Notwithstanding, the Chamber considers an additional delay of three working days to file a consolidated reply to the Defence Response, Defence Addendum and the IADL letter and resolution is in the interests of justice and does not prejudice either party. Therefore, the Prosecution may either file its reply to the Defence Response and Defence Addendum on 24 February 2012, and a separate reply to the IADL letter and resolution on 29 February 2012, or file a consolidated reply to all on 29 February 2012.

⁹ Rule 73(E) of the Rules (any response shall be filed five days from the date on which Counsel received the motion).

¹⁰ See Article 19 (1) of the Statute of the Tribunal. See also Rule 54 of the Rules.

¹¹ In so warning the Prosecution and Defence Counsel of what might constitute offensive and abusive conduct pursuant to Rule 46 (A) of the Rules, the Chamber also cautions both parties that it will not look favorably on unnecessary or repeated requests to impose sanctions on opposing counsel pursuant to Rule 46 (A) of the Rules.

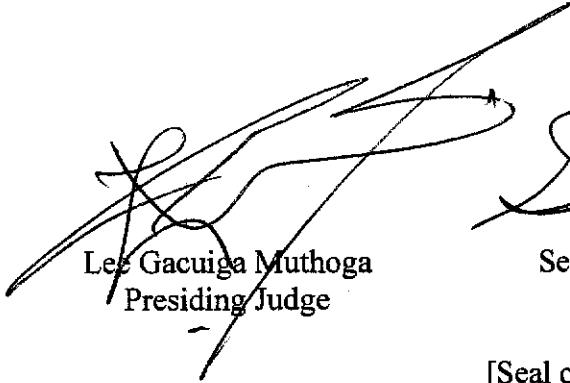


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BASED ON THE FOREGOING, THE CHAMBER

GRANTS, IN PART, the Motion. The Prosecution may either file its reply to the Defence Response and Defence Addendum on 24 February 2012, and a separate reply to the IADL letter and resolution on 29 February 2012, or file a consolidated reply to all on 29 February 2012.

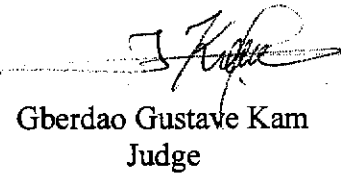
Arusha, 23 February 2012, done in English



Lee Gacuiga Muthoga
Presiding Judge



Seon Ki Park
Judge



Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

