

ICTR-99-54-T
20-04-2011
(110007 - 110001)

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Mwamba



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: 20 April 2012

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

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DECISION ON DEFENCE MOTION FOR VARIATIONS TO SCHEDULING
ORDER FOR CLOSING BRIEFS AND ARGUMENTS

Office of the Prosecutor

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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 Extremely Urgent Motion for Extension of the Number of Words Allowed for the Closing Brief, for Modification of the Dates for Oral Closing Arguments, for Clarification on the Scheduling Order, or for Ancillary Request for Variation of a Directive in the Scheduling Order," filed on 4 April 2012 (the "Defence Motion");

CONSIDERING:

- (a) The "Prosecutor's Response to Defence Extremely Urgent Motion for Extension of the Number Of Words Allowed for the Closing Brief, for Modification of the Dates for Oral Closing Arguments, for Clarification on the Scheduling Order, or for Ancillary Request for Variation of a Directive in the Scheduling Order", filed on 10 April 2012 (the "Prosecution Response"); and
- (b) The "Defence Reply to Prosecutor's Response To Defence Extremely Urgent Motion for Extension of the Number Of Words Allowed for the Closing Brief, for Modification of the Dates for Oral Closing Arguments, for Clarification on the Scheduling Order, or for Ancillary Request for Variation of a Directive in the Scheduling Order", filed on 11 April 2012 (the "Defence Reply");

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

NOW DECIDES the Motion pursuant to Rules 54 and 86 of the Rules.

INTRODUCTION

1. On 27 March 2012, the Parties made oral submissions regarding the timing of the Closing Arguments.¹

2. On 29 March 2012, the Chamber issued the "Scheduling Order for Closing Briefs and Arguments" (the "Scheduling Order"), which limited the word count for each Party's Closing Brief to 30,000, ordered the Closing Brief to be filed on 14 May 2012, and ordered Closing Arguments to be heard on 18 and 19 June 2012. The Scheduling Order also directed the Parties "not to incorporate any previously made submissions by way of reference or any other means", and ordered the Parties "to provide appropriate citations, including precise references to the trial record".²

¹ T. 27 March 2012, pp. 5-7.

² Scheduling Order for Closing Briefs and Arguments (TC), 29 March 2012 ("Scheduling Order"), pp. 2-3.



3. On 3 April 2012, the Chamber granted the Parties' request for a site visit to the Republic of Rwanda, and scheduled the site visit for 21 through 25 May 2012.³

SUBMISSIONS OF THE PARTIES

Defence Motion

4. First, the Defence seeks to extend the word limit of the Closing Brief to 60,000 words. It submits that the word limit of 30,000 words set forth in the Scheduling Order is insufficient for the Defence to properly address the case. It notes that while the Practice Direction states that the usual length for a single-accused case is 30,000 words, this is a guideline and not a requirement that must be applied to every case.⁴

5. The Defence emphasizes the complexity of this case. It submits that this is the longest single-accused trial in the history of the Tribunal, with over 150 hearing days so far. The Chamber has also heard 61 witnesses and admitted approximately 300 documents as exhibits. Besides the unprecedented number of submissions filed, the Indictment contains 6 counts and 48 paragraphs. The Accused also has to address 38 material facts outside the scope of the Indictment and the Pre-Trial Brief, as well as 9 material facts outside the temporal jurisdiction of the Tribunal.⁵

6. Second, the Defence requests that Closing Arguments be heard on 28 and 29 May 2012. Alternatively, if the schedule does not allow it, Closing Arguments can be heard after the first week of August 2012. The Defence submits that the schedule can be arranged to accommodate the Lead Counsel without undue hardship or any delay for the Parties and the Chamber, and this will even expedite proceedings.⁶

7. According to the Defence, the Closing Arguments must be rescheduled to a time when the Lead Counsel would be available to attend. Given the recent appointment of the Co-Counsel, he cannot be duly prepared to address the Oral Arguments by himself. The Defence emphasizes the importance of Closing Arguments, and that the Accused had instructed his Lead Counsel to be present during Closing Arguments. The Defence argues that since the Defence Closing Arguments will respond to the Prosecution Closing Arguments, this requires the Lead Counsel, who has been on the case since the beginning, to be present to ensure the Accused's rights are protected.⁷

8. Third, the Defence seeks to clarify the scope and content of the Scheduling Order statement that the Parties "are not to incorporate any previously made submissions by way of reference or any other means". The Defence seeks to confirm whether its understanding is correct: that the Defence cannot re-plead arguments made in previous

³ Decision on Site Visit to the Republic of Rwanda (TC), 3 April 2012 ("Decision of 3 April 2012"), p. 8.

⁴ Defence Motion, paras. 5-9 (addressing the Practice Direction on Length and Timing of Closing Briefs and Closing Arguments), 19, 21-27, 57, 92.

⁵ *Id.*, paras. 10-18.

⁶ *Id.*, paras. 30-31, 36, 52-56, 92.

⁷ *Id.*, paras. 28, 32-51.

motions and re-litigate issues already adjudicated, but it can nonetheless refer the Chamber to paragraphs of previous submissions from the Parties in the case.⁸

9. If the Chamber however indicates that the Parties cannot make reference to any previous submissions made, the Defence submits that this would be highly prejudicial to the Accused, and it would go against the interest of justice. The Defence would then request the removal of such Direction.⁹

Prosecution Response

10. The Prosecution requests the Chamber to dismiss the Defence Motion. It submits that there is nothing complex in this case, as it is a single-accused case involving 20 Prosecution witnesses and 35 Defence witnesses. It contends that the only legal issue relates to the late notice of alibi, which both Parties are capable of addressing within the word limit. Exhibits tendered by both Parties and the issue of credibility of witnesses are not complex either. Further, the Prosecution had withdrawn a number of Indictment paragraphs, with the remaining paragraphs relating to events replicated in each count. It submits that there is little or no need to refer to decisions rendered in the course of trial.¹⁰

11. The Prosecution submits that the dates for closing arguments were set by the Chamber after hearing the Parties, and that a modification of the dates will result in a delayed trial for no apparent reason.¹¹

12. It submits that the Scheduling Order is clear on the prohibition to re-litigate issues or make submissions already dealt with in the course of trial, as repeating them does not advance the arguments of Parties.¹²

Defence Reply

13. The Defence argues that the alibi issue is not the only matter that needs to be addressed and lists many legal issues that it suggests will need to be addressed in the Closing Briefs. It notes that even if some Indictment paragraphs are repetitive, they are contained in different Indictment counts and will have to be assessed separately.¹³

14. The Defence also submits that having the oral pleadings three weeks before the date set in the Scheduling Order cannot result in a delayed trial. It emphasizes the amount of work Co-Counsel needed to do to be prepared for the Closing Brief.¹⁴

⁸ *Id.*, paras. 58-60.

⁹ *Id.*, paras. 61-92.

¹⁰ Prosecution Response, paras. 3-5, 8.

¹¹ *Id.*, para. 6.

¹² *Id.*, para. 7.

¹³ Defence Reply, paras. 5-13.

¹⁴ *Id.*, paras. 14-19.

DELIBERATIONS

Extension of Length of Closing Briefs

15. The Defence submits that the Indictment, the number of trial days, and the evidence adduced demonstrates that 30,000 words will be insufficient for the Defence Closing Brief.¹⁵

16. In issuing the Scheduling Order, the Chamber had taken into consideration the circumstances of this case before deciding on the length of the Parties' Closing Briefs. The Chamber is not persuaded by the Defence submissions that this case is so voluminous and complex as to warrant a doubling of the word count already provided. This case may be longer than some other single-accused cases in terms of trial days, but it does not necessarily make it more complex.

17. The length of the case does not in any way shift the burden of proof to the Defence. The onus is still on the Prosecution to prove the case beyond a reasonable doubt. The Chamber notes that the Prosecution does not view the case to be complex and does not seek any increase in the length of the Closing Brief.¹⁶

18. Besides, the quality and effectiveness of the Closing Brief does not depend on the length but on the clarity and coherence of the presented arguments. Therefore excessively long briefs do not necessarily serve the cause of efficient administration of justice. The Chamber considers that the 60,000 words requested by the Defence would be excessive and run against judicial economy.

19. The Chamber, however, considers it in the interest of justice to give the Parties an additional 6,000 words for the Closing Briefs, which gives a total of 36,000 words.

Modification of Dates for Closing Arguments

20. The Defence submits that the Closing Arguments should be rescheduled to 28 and 29 May 2012, or alternatively to August 2012.¹⁷ The Prosecution suggest that the Closing Arguments should not be rescheduled.¹⁸

21. Preliminarily, the Chamber recalls that the Defence had already suggested that Closing Arguments take place in or after August 2012.¹⁹ The Scheduling Order took this request into account.²⁰

¹⁵ See, for example, Defence Motion, paras. 17-19.

¹⁶ Prosecution Response, paras. 3-5, 8.

¹⁷ Defence Motion, paras. 55, 57, 92.

¹⁸ Prosecution Response, paras. 6, 8.

¹⁹ See T. 27 March 2012, p. 6 (stating that Defence Lead Counsel would have to leave Tanzania at the latest on 1 June 2012, and asking that Closing Arguments be held after the judicial recess). The Chamber notes that judicial recess, in the past, has normally taken place from around mid-July through around mid-August.

²⁰ See Scheduling Order, p. 2 (citing T. 27 March 2012, pp. 5-7).

22. The Chamber further recalls that, at the Parties' request, it will conduct a site visit to Rwanda. The site visit is scheduled for 21 through 25 May 2012, with a report to be prepared and circulated within seven days after the site visit.²¹ The Chamber considers that this report should be circulated prior to the Closing Arguments, and thus the Parties could not be heard on 28 and 29 May 2012.²²

23. The Chamber notes that the Closing Argument is primarily not meant for the Parties to repeat arguments already made in their Closing Briefs, but to respond to issues raised in the other Party's Brief and to raise other issues not covered in the Parties' Closing Briefs. The Closing Arguments should thus be very specific and limited in scope.

24. With regard to the Defence submissions about Co-Counsel's ability to conduct Closing Arguments as scheduled, the Chamber recalls that "the purpose of a co-counsel is not only to assist the lead counsel but indeed to conduct the case in order to allow the proceedings to continue in the event of an unforeseeable absence of the lead counsel".²³ In the Chamber's view, the Defence Co-Counsel should be competent to handle the Closing Arguments in June 2012, especially given that he has been assigned to the case since February 2012.

25. Moreover, the Defence Co-Counsel has the assistance of other members of the Defence team, some of whom have been on the case since the trial proceedings commenced. Additionally, the Lead Counsel's anticipated absence should not preclude her from preparing in advance for and participating in the Closing Arguments, especially given that she was prepared to present the Closing Argument at the end of May 2012. To the extent that the Co-Counsel would need to take instructions from the Lead Counsel during Closing Arguments on how to respond to any specific submissions by the Prosecution, the Defence could raise this matter as it arises. The Chamber therefore finds that the Accused will not suffer any prejudice in the absence of the Lead Counsel.

Clarifications on the Scheduling Order Directive

26. The Chamber clarifies that the Parties are allowed to make references and citations to support their arguments in the Closing Briefs. This is clear from the statement in the Scheduling Order that the Parties are "to provide appropriate citations, including precise references to the trial record, to support the assertions and arguments made in their Closing Briefs".²⁴ However the Chamber would like to underscore that the Closing Brief should be self-contained and complete by itself. The Parties should not use references as a basis to incorporate previous submissions, thereby inflating the content of the Closing Brief.

²¹ Decision of 3 April 2012, pp. 8-9.

²² See Defence Motion, paras. 55, 92.

²³ *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement (AC), 20 October 2010, para. 32. See also Directive on the Assignment of Defence Counsel, Art. 15 (E) ("Under the authority of Lead Counsel, who has primary responsibility for the Defence, Co-Counsel may deal with all stages of the procedure and all matters arising out of the representation of the accused or of the conduct of his Defence.").

²⁴ Scheduling Order, p. 3.

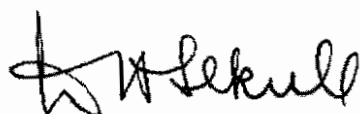
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence Motion in part;

ORDERS that the Closing Briefs shall not exceed 36,000 words; and

DENIES the Defence Motion in all other respects.

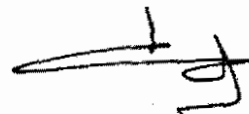
Arusha, 20 April 2012



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

