

ICTR-95-1A-1
08-06-2001
(1795-1790)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

TRIAL CHAMBER I

ORIGINAL: ENGLISH

Before: Judge Erik Møse, Presiding
Judge Asoka de Z. Gunawardana
Judge Mehmet Güney

Registry: Mr Adama Dieng

Delivered on: 8 June 2001

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR
Versus
IGNACE BAGILISHEMA

ICTR-95-1A-T

DECISION ON THE PROSECUTOR'S REQUEST PURSUANT TO RULE 99(B)

The Office of Prosecutor:

Mr Charles Adeogun-Phillips
Mr Wallace Kapaya
Ms Boi-Tia Stevens

Counsel for the Defence:

Mr François Roux
Mr Maroufa Diabira
Ms Héleyn Uñac

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: AMINATTA L. R. N'GUM
SIGNATURE: *A. N'GUM*, 08/06/2001

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Asoka de Z. Gunawardana and Judge Mehmet Güney;

CONSIDERING that Ignace Bagilishema was acquitted, by majority decision, on 7 June 2001, on all the counts preferred against him;

CONSIDERING that the Trial Chamber issued an order for immediate release, pursuant to Rule 99(A) of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING the Prosecution’s request under Rule 99(B) for arrest and further detention;

CONSIDERING the Prosecution’s oral notice of appeal and its motion for an arrest warrant pursuant to Rule 99(B), and the Defence reply thereto;

HEREBY DECIDES on the Prosecution’s request.

Introduction

1. On 7 June 2001 this Trial Chamber delivered Judgement in the case of *The Prosecutor v. Ignace Bagilishema*. The Accused was acquitted unanimously on three counts, and by a majority on four counts.
2. During the hearing, the Prosecution gave notice of its intention to appeal, on the basis of the Separate and Dissenting Opinion of Judge Güney. Further, under Rule 99(B), the Prosecution requested a warrant for the arrest and continued detention of Ignace Bagilishema, pending the outcome of the appeal. In support of its request the Prosecution argued that there is a real risk that Ignace Bagilishema, if released, will interfere with witnesses and abscond.
3. Should the Chamber not accept the Prosecution’s request for the arrest and further detention of Ignace Bagilishema, the Prosecution requested, as an alternative, that certain conditions be imposed upon his liberty. The Prosecution requested the following conditions:

- i. that Ignace Bagilishema notifies the Tribunal of, and resides at, a specific address;
- ii. that he notifies the Tribunal and the local police of any change of address;
- iii. that he surrenders his travel documents to the Tribunal or to the local police;
- iv. that he reports to the local police once every two weeks;
- v. that he undertakes not to interfere with witnesses, directly or indirectly.

4. The Defence argued that Ignace Bagilishema, as an acquitted man, should be released immediately. He has been in the custody of the Tribunal for two years and five months. Throughout this period he has been presumed innocent and the Judgement has now established that he is innocent. The Prosecution's argument that Ignace Bagilishema may interfere with witnesses is without merit. He did not do so during the trial. Moreover, witnesses are rarely called to testify before the Appeals Chamber.

5. The Defence recalled that under general principles of law, such as the European Convention on Human Rights, everyone has the right to liberty, whereas detention is only permitted in exceptional circumstances. It was also submitted that in some national jurisdictions, such as France, an accused may not be in custody following an acquittal, pending an appeal by the Prosecution. Counsel also referred to two cases in Rwanda where acquitted persons were released immediately in spite of a notice of appeal by the Prosecution.

6. However, the Defence stated that Ignace Bagilishema would be able to provide the following conditions of release, if required by the Chamber:

- i. that Ignace Bagilishema notifies the Tribunal of his specific address and resides there;
- ii. that he reports to the *gendarmerie* (local police) once a month;
- iii. that he provides two sureties;
- iv. that he does not travel outside his country of residence without permission of this Tribunal.

Deliberations

7. According to Rule 99(A) of the Rules, an accused shall be released immediately in case of acquittal. However, if, at the time the Judgement is pronounced, the Prosecutor advises the Chamber of its intention to file notice of appeal pursuant to Rule 108, the Chamber may, at the request of the Prosecutor, issue a warrant for the arrest and further detention of the accused under Rule 99(B). Such an order is to take effect immediately. It is at the discretion of the Chamber whether such an order shall be made.

8. Rule 99(B) is silent on the material conditions which have to be fulfilled for the Chamber to make such an order. There is no previous case law within this Tribunal under this provision and limited case law by the International Criminal Tribunal for the Former Yugoslavia. The Chamber finds it clear that material considerations under this provision include, for instance, whether there is a real risk that the accused may abscond during the appeal proceedings. This is also relevant in several national jurisdictions. In this connection, the Chamber notes that the risk of absconding is also relevant under Rule 65 concerning provisional release. The burden is on the party requesting continued detention to demonstrate the necessity for such an order under Rule 99(B).

9. The Prosecution has argued that continued detention is justified in order to prevent Ignace Bagilishema from interfering with witnesses before the ICTR. The Chamber finds no merit to this contention. In the present case, there is no evidence that he has, directly or indirectly, interfered with witnesses during his trial, despite being in possession of statements identifying Prosecution witnesses. Moreover, in appeal proceedings, there is only a limited possibility for the hearing of witnesses. Should the situation arise, the Prosecution may move before the Appeals Chamber for additional measures for protection of witnesses. It will then be for that Chamber to decide whether such measures are necessary.

10. The main argument of the Prosecution is that if Ignace Bagilishema is released immediately, there is a risk that he will abscond during the appeals proceedings. The Chamber is anxious to avoid such a situation. In this connection, the Chamber notes that evasion from international criminal proceedings presents particular problems as compared with absconding from national proceedings. These considerations must be weighed against the fact that Ignace Bagilishema has been acquitted, and the fundamental right to liberty.

11. In the Chamber's view, the decision must be taken on a case by case basis, taking into account the well established principle of proportionality, i.e. that there must be a reasonable proportionality between the aim sought and the measures adopted. In the present case, the Chamber notes that there is a dissenting opinion. Ignace Bagilishema has generally co-operated during the judicial proceedings before this Tribunal. His alleged attempts to avoid arrest by the Tribunal should not, in the particular circumstances of the case, be held against him. The Prosecution has accepted that conditions be imposed on Ignace Bagilishema as an alternative to continued detention. The Defence has agreed to this if the Chamber so requires. In the opinion of the Chamber, the imposition of such conditions will ensure the fundamental right to liberty of the acquitted person while providing sufficient guarantees that Ignace Bagilishema does not abscond during the appeals proceedings.

FOR ALL THE ABOVE REASONS THE TRIAL CHAMBER HEREBY

DENIES the Prosecution's request under Rule 99(B) for an arrest warrant and an order for continued detention of Ignace Bagilishema.

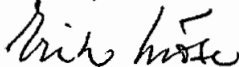
ORDERS that Ignace Bagilishema be immediately released on satisfaction of the following conditions:

- i. that he provide two persons of good standing acceptable to the Tribunal as sureties, who can guarantee his attendance when requested by the Tribunal. Their particulars shall be communicated to the Tribunal;
- ii. that he provide an address where he will reside and undertake to inform the Tribunal and the local police nearest his residence in case of any change of address;
- iii. that he report on the last Monday of each month at the local police nearest to his residence;
- iv. that he not travel outside the country of his residence without the written permission of the Tribunal;
- v. that his travel documents be retained by the local police, unless directed otherwise by the Tribunal.

DIRECTS the Registrar to release immediately Ignace Bagilishema, when satisfied that the aforementioned conditions have been met, and that the necessary practical arrangements have been made, including required consultations with relevant national and international authorities.

RECALLS that, pursuant to Article 28 of the Statute, States are under an obligation to afford cooperation and judicial assistance to the Tribunal.

Arusha, 8 June 2001



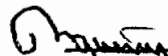
Judge Erik Møse

Presiding



Asoka de Z. Gunawardana

Judge



Mehmet Güney

Judge

