



UNITED NATIONS
NATIONS UNIES

ICTR-2001-60-I
20-8-2004
(773 — 770)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy B. Bossa

Registrar: Mr. Adama Dieng

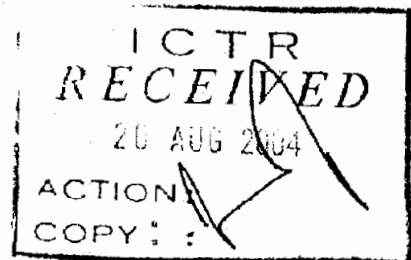
Date: 20 August 2004

The PROSECUTOR

v.

Paul BISENGIMANA

Case No. ICTR-2001-60-I



**DECISION ON DEFENCE URGENT MOTION TO ACKNOWLEDGE
VIOLATION OF THE ACCUSED'S RIGHTS**

Office of the Prosecutor
Mr. Charles Adeogun-Phillips
Mr. Wallace Kapaya
Ms. Renifa Madenga

Defence Counsel
Ms. Catherine Mabilile

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

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”);

BEING SEISED of “Bisengimana’s Urgent Motion to Acknowledge Violation of the Accused’s Rights” (“the Motion”), filed on 20 February 2004;¹

CONSIDERING the “Prosecutor’s Response to Bisengimana’s Urgent Motion to Acknowledge Violation of the Accused’s Rights” (“the Response”), filed on 4 March 2004;

CONSIDERING “Bisengimana’s Reply to the Prosecutor’s Response to ‘Bisengimana’s Urgent Motion to Acknowledge Violation of the Accused’s Rights’” (“the Reply”), filed on 10 March 2004;²

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

SUBMISSIONS BY THE PARTIES

Defence Motion

1. The Defence submits that the case against Bisengimana is closely related to the case against Semanza, who was convicted by the Tribunal on 15 May 2003 and sentenced to 24 years and six months’ imprisonment: the indictment against Bisengimana contains several references to Semanza and several references to Bisengimana were made in the indictment against Semanza. The *Semanza* Judgement mentions the name of Bisengimana 41 times and concludes that Bisengimana is directly implicated in the massacres at Musha Church and that Bisengimana is directly implicated in the torture and assassination of Rusanganwa.
2. The Defence submits that the current Motion was filed together with a Motion to appear as an *amicus curiae* in the *Semanza* case before the Appeals Chamber and a Motion to censor all references to Semanza in the Indictment against Bisengimana.
3. The Defence submits that the numerous mentions of Bisengimana in the *Semanza* Judgement violate his right to be presumed innocent until proven guilty, pursuant to Article 20(3) of the Statute. Moreover, the Defence quotes several abstracts of the *Semanza* Judgement, in which the Trial Chamber found that “Laurent Semanza, together with Paul Bisengimana” committed crimes, that is to say paragraphs 425, 429, 486, 549 of the Judgement and paragraph 55 and 67 of the separate opinion of Judge Ostrovsky.
4. According to the Defence, the violation of the Accused’s right to be presumed innocent violates his right to a fair trial, pursuant to Article 20(2) of the Statute.

¹ The Motion was filed in French and originally entitled: “*Requête urgente de Paul Bisengimana en constatation de violation des droits de l’accusé*”.

² The Reply was filed in French and originally entitled “*Réplique à la Réponse du Procureur à la requête urgente de Paul Bisengimana en constatation de violation des droits de l’accusé*”.

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5. The Defence submits that, even if the Accused is judged by a different bench than the one sitting in the *Semanza* trial, the new judges have knowledge of the *Semanza* Judgement which creates a presumption of guilt and may jeopardize their impartiality.
6. The Defence also submits that the problem is similar with the Prosecution witnesses who were heard and whose credibility was assessed in the *Semanza* case: the judges may be tempted to consider them as credible without a chance for the Defence to dispute their credibility.
7. Finally, the Defence submits that such a perception may be formed in the mind of the Accused.
8. The Defence knows that the Trial Chamber has no jurisdiction to remedy such situation, nor to intervene before the Appeals Chamber. However, the Defence submits that an acknowledgement by the Trial Chamber that the rights of the Accused were violated in the *Semanza* Judgement would be a symbolic reparation of his prejudice and would encourage the granting of the Defence Motion to appear as *amicus curiae* before the Appeals Chamber.
9. According to the Defence, the seriousness of the alleged violations of the rights of the Accused requires reinforced guarantees of impartiality from the bench.
10. Therefore, the Defence prays the Chamber to acknowledge that the rights of the Accused to be presumed innocent and to a fair trial were violated and to affirm that all guarantees of impartiality and fair trial will be granted.

Prosecutor's Response

11. The Prosecutor submits that the Trial Chamber has jurisdiction to answer the Defence requests.

AFTER HAVING DELIBERATED

12. In the Chamber's view, there are two distinct issues that are raised by the Defence in its Motion: the first issue is the allegation of violation of Bisengimana's rights in the *Semanza* Case; the second issue is the alleged threat of violation of the Accused's rights, in particular his right to be presumed innocent, in the current Case as a result of the *Semanza* Judgement.
13. With regard to the first issue, as acknowledged by the Defence in its submission, the Trial Chamber has no jurisdiction over the *Semanza* Judgement, issued by a different Chamber, currently before the Appeals Chamber, and in which the Accused was not represented. Therefore, the Trial Chamber dismisses the Defence request to acknowledge that the rights of the Accused to be presumed innocent and to a fair trial were violated in the *Semanza* Judgement.
14. With regard to the second issue raised by the Defence, the Trial Chamber recalls that, as highlighted by the Appeals Chamber in the *Rutaganda* case, the judges composing the bench are not bound by the findings of former decisions.³

³ *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, para. 188.

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Trial Chambers, which are courts with coordinate jurisdiction, are not mutually bound by their decisions, although a Trial Chamber is free to follow the decision of another Trial Chamber if it finds that decision persuasive.

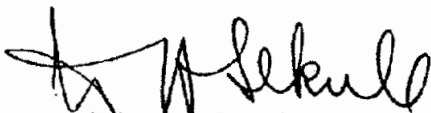
15. Judges composing the bench are professional judges, whose impartiality cannot be prejudiced by former decisions that were issued without the Accused being represented. The case against the Accused will be determined upon the evidence that will be adduced in the course of his trial and the Accused will be given full opportunity to defend himself and to challenge the Prosecution case, in particular by cross-examining Prosecution witnesses and by calling and examining witnesses on his behalf, pursuant to Article 20, para. 4 (e) of the Statute.

16. Therefore, the Trial Chamber affirms that the Accused is presumed innocent, whatever the findings in the *Semanza* Judgement, and will be given full opportunity to defend himself and challenge the Prosecution case during his own trial.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DISMISSES the Motion.

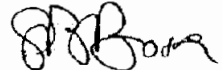
Arusha, 20th August 2004



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy B. Bossa
Judge

