



ICTR-98-41-T
31-12-2008
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(39948 - 39945)

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TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 31 December 2008

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

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Decision on Prosecution Motion to Impose Conditions on Kabiligi's Liberty

The Office of the Prosecutor

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George Mugwanya

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Counsel for the Other Accused

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

SITTING as Judge Erik Møse, designated by Trial Chamber I, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence, following consultations;

BEING SEIZED OF the Prosecution motion to impose conditions on Gratien Kabiligi's liberty, filed on 22 December 2008;

CONSIDERING the Defence response, filed on 29 December 2008;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Chamber pronounced its judgement in this case on 18 December 2008 and indicated that its written reasons would follow in the coming days after the completion of the final editorial process. Gratien Kabiligi was acquitted on all counts against him, and the Chamber ordered his immediate release.¹ During the oral hearing, the Prosecution did not express its intention to file a notice of appeal.

2. On 22 December 2008, the Prosecution filed a motion to impose conditions on Kabiligi's liberty pending its decision whether to appeal. The Prosecution explains that, at the time of delivery, it was not in a position to know if it would appeal the acquittal because it had not yet received the full text of the judgement and thus could not make its request at the time of pronouncement. It will be in a position to know if it will appeal after reviewing the written judgement. In the interim period, it requests the Chamber to exercise its inherent authority and order temporary measures to ensure that Kabiligi is available within the Tribunal's jurisdiction so as not to frustrate the appeal process.²

3. The Defence responds that there is no basis to impose any restrictions on Kabiligi's liberty. Rule 99 (B) of the Rules requires the Prosecution to make such a request in open court at the time the judgement is pronounced. At such a time, the Prosecution would not be in any better position to review the full text of the judgement than it is now. Furthermore, there is no precedent for a Chamber to order restrictions pursuant to its inherent authority. In any event, the Prosecution request is moot and premature because Kabiligi's travel documents are already in the Tribunal's custody as exhibits in the case, and he is currently residing in a safe house in Arusha.³

DELIBERATIONS

4. As a preliminary matter, the Chamber is satisfied that it continues to have jurisdiction over this case until the Appeals Chamber is seized of it. Furthermore, both Rule 99 (B) as well as its inherent authority to ensure the enforcement of its judgement allow it to issue orders concerning acquitted persons.⁴

¹ T. 18 December 2008 pp. 2, 10.

² Prosecutor's Extremely Urgent Motion Requesting the Chamber to Impose Conditions on Kabiligi's Liberty Pending the Prosecutor's Decision to Appeal, 22 December 2008, paras. 1-8.

³ Kabiligi Response to "Prosecutor's Prosecutor's Extremely Urgent Motion Requesting the Chamber to Impose Conditions on Kabiligi's Liberty Pending the Prosecutor's Decision to Appeal", 29 December 2008, paras. 1-18.

⁴ See *In re André Ntagerura*, Decision on Motion for Leave to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008 (AC), 11 September 2008, para. 13. Moreover, in the *Rwamakuba* case, the Trial Chamber held separate proceedings following the issuance of the judgement

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5. Rule 99 (B) authorises a Chamber to issue a warrant for the arrest and further detention of an acquitted person with immediate effect if the Prosecution at the time the judgement is pronounced advises the Trial Chamber in open court of its intention to file a notice of appeal. The Tribunal has never issued a warrant of arrest for the further detention of an acquitted person. On two occasions in respect of three individuals, it has used this provision to impose lesser restrictions, such as imposing travel restrictions, the surrendering of travel documents, reporting requirements and placement in a safe house pending relocation to another state.⁵ In both instances, the Prosecution made the request at the time the judgement was pronounced.⁶ With respect to two of the three acquitted persons, there was a dissenting opinion on the verdict of acquittal.⁷

6. The Prosecution did not make a timely request under Rule 99 (B) to impose restrictions on Kabiligi's liberty. Nevertheless, like other time limits provided for under the Rules, a Chamber may allow an extension of time or consider a request as being timely filed upon a showing of good cause or in the interest of justice. The Prosecution's inability to review the full text of the judgement is not good cause since it would be in no better position to do so at the time of pronouncement. However, given the size of this multi-Accused case and the change in composition of the Prosecution team, the Chamber considers that a measure of reflection is required to determine whether it intends to file a notice of appeal. In the Chamber's view, this constitutes good cause for the delay. In this respect, the Chamber emphasises that the request was filed within four days of the pronouncement and seeks only temporary travel restrictions as well as a reporting requirement, not detention.

7. The Prosecution requests the Chamber to order Kabiligi to remain in Arusha and provide the Tribunal with his contact information, to deposit his travel documents with the Registrar, and to report daily with the Registrar or Tribunal security. It submits that there is a high risk that Kabiligi will flee if the Prosecution files an appeal. It further emphasises that he did not surrender and it was extremely difficult and expensive to locate and arrest him.⁸

8. The Chamber notes that Kabiligi is already subject to *de facto* restrictions on his movement. His passport is part of the evidence of this case and must be maintained until the completion of any possible appeal against him. He is also residing in the Tribunal's custody in a safe house. Consultations with the Registry indicate that it has not yet identified a third country in which to relocate him. Experience shows that this could take some time.⁹ Furthermore, the Prosecution has not identified any concrete risk that Kabiligi will flee and become unavailable if it files a notice of appeal.¹⁰ In the present circumstances, the Chamber is not satisfied that there is sufficient cause to order any further restrictions on Kabiligi's liberty.

concerning an appropriate remedy for certain violations of his fair trial rights. See Decision on Appropriate Remedy (TC), 31 January 2007. The Appeals Chamber affirmed this exercise of the Trial Chamber's jurisdiction. See Decision on Appeal against Decision on Appropriate Remedy (AC), 13 September 2007, para. 26.

⁵ *The Prosecutor v. André Ntagerura et al.*, Decision on the Prosecutor's Request Pursuant to Rule 99 (B), 26 February 2004, pp. 1-2; *The Prosecutor v. Ignace Bagilishema*, Decision on the Prosecutor's Request Pursuant to Rule 99 (B) (TC), 8 June 2001, p. 6.

⁶ *The Prosecutor v. André Ntagerura et al.*, T. 25 February 2004 p. 18; *The Prosecutor v. Ignace Bagilishema*, T. 7 June 2001 pp. 73-80.

⁷ The acquittal of André Ntagerura was unanimous. There were dissenting opinions with respect to Emmanuel Bagambiki and Ignace Bagilishema. The Prosecution did not request interim measures or file an appeal against the acquittals of Jean Mpambara or André Rwamakuba.

⁸ Motion, paras. 5, 7.

⁹ See, e.g., *In re André Ntagerura*, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008 (AC), 18 November 2008, para. 2.

¹⁰ While Kabiligi did not voluntarily surrender to the Tribunal, the Chamber notes that he was not given an opportunity to do so since he was arrested before his indictment was confirmed.

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9. Nevertheless, it is in the interests of justice that Kabiligi be available and accessible in the event of continued proceedings against him. Therefore, if there is a change in his present residence before the expiration of the period for filing a notice of appeal, he should keep the Tribunal as well as his counsel fully informed of his whereabouts.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution Motion, in part;

REQUESTS Kabiligi to inform the Tribunal and his counsel of his whereabouts in the event that there is a change in his present residence before the expiration of the period for filing a notice of appeal;

DENIES the Prosecution Motion in all other respects.

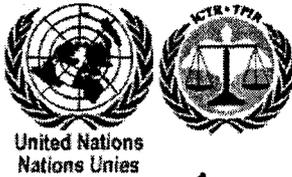
Arusha, 31 December 2008



Erik Møse
Presiding Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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| To: | <input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo | <input type="checkbox"/> Trial Chamber II R. N. Kouambo | <input type="checkbox"/> Trial Chamber III C. K. Hometowu | <input type="checkbox"/> Trial Chamber III A. N'Gum |
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| Case Name: | The Prosecutor vs. Bagosora, Kabiligi, Ntabakuze, Nsengiyumva | | | Case Number: ICTR-98-41-T |
| Dates: | Transmitted: 31 December 2008 | | Document's date: 31 December 2008 | |
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Reference material is provided in annex to facilitate translation.

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CMS SHALL NOT take any action regarding translation.

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