

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-01-77-S
CHAMBER II

THE PROSECUTOR
OF THE TRIBUNAL
v.
JOSEPH NZABIRINDA

FRIDAY, 23 FEBRUARY 2007
1015H
JUDGEMENT

Before the Judges:

Arlette Ramaroson, Presiding
William H. Sekule
Solomy Bossa

For the Registry:

Mr. John Kiyeyeu
Mr. Emmanuel Mwanja

For the Prosecution:

Mr. Hassan Abubacar Jallow
Mr. William Egbe
Mr. Gregory Townsend

For the Accused Joseph Nzabirinda:

Mr. François Roux
Mr. Jean Haguma

Court Reporters:

Ms. Sithembiso Moyo
Ms. Ann Burum

PROCEEDINGS

1

2 MADAM PRESIDENT:

3 The session is called to order.

4

5 Registry, could you please tell the Court what is on the roll for it this morning?

6 MR. KIYEYEU:

7 Thank you, Madam President.

8

9 Trial Chamber II of the International Criminal Tribunal for Rwanda, composed of
10 Judge Arlette Ramaroson, presiding, Judge William H. Sekule and Judge Solomy Bossa, is now sitting
11 in open session today, Friday, the 23rd of February 2007, for the delivery of the sentence in the matter
12 of the Prosecutor versus Joseph Nzabirinda, Case No. ICTR 01-77-S.

13

14 Thank you, Madam President.

15 MADAM PRESIDENT:

16 Thank you, Counsel for the registry.

17

18 Can the parties please introduce themselves? Let's begin with the Prosecution.

19 MR. JALLOW:

20 May it please the Court, the Prosecution appears in person. And with me are Bill Egbe, senior trial
21 attorney; Gregory Townsend, trial attorney; and Amina Ibrahim, case manager. As it pleases the Court.

22 MADAM PRESIDENT:

23 We thank you, Mr. Prosecutor.

24

25 Can the Defence please introduce itself?

26 MR. ROUX:

27 Good morning, Madam President, Your Honours. The Defence this morning is composed of
28 Bâtonnier Jean Haguma from the Kigali Bar association, our assistant Charlotte Moreau; our assistant,
29 Mr. Pierre Celestin Buhuru from the Kigali Bar and myself, François Roux, lawyer with the
30 Montpellier Bar in France. Thank you

31 MADAM PRESIDENT:

32 We thank you, Counsel.

33

34 As has been announced a moment ago, today's hearing is for the Chamber to deliver judgement in the
35 sentencing in the matter of the Prosecutor versus Nzabirinda. What follows is a summary and not the
36 official text of the judgement. The written judgement will be made available to the parties and to the
37 public at the end of this hearing.

1 The Accused, Joseph Nzabirinda, was a former youth organiser in Butare *préfecture* from 1976 to 1992
2 before becoming managing director of Secobe in Kigali. He was also a founding member of the
3 *Parti social démocrate* in 1990. He was arrested on 21 December 2001 in Brussels by the Belgian
4 authorities based on an arrest warrant dated 13th December 2001, annexed to an indictment dated
5 6th December 2001 issued by this Tribunal. During his initial appearance on the 27th of March 2002,
6 the Accused pleaded not guilty to all four counts of the indictment.

7
8 On 20th November 2006, the Prosecutor filed a motion to amend the indictment dated
9 13th December 2001. On the 8th December 2006, the motion was granted by the Chamber. Under the
10 amended indictment dated 9th December 2006, Joseph Nzabirinda is only charged with aiding and
11 abetting and preparing the commission of two murders, a crime against humanity under Article 3(A) and
12 6(1) of the Statute as an accomplice by omission.

13
14 The indictment alleges that after the 19th April 1994, the Accused attended several so-called
15 "pacification meetings", "pacification meetings" is in inverted commas, in Sahera *secteur*, Ngoma
16 *commune*, Butare *préfecture*, where only the Hutu and killers of his *secteur* were present.
17 Following the meetings, systematic attacks were launched against Tutsi families living on the Accused's
18 hill. During one of these attacks the *Interahamwe* killed Pierre Murara near the location of the
19 "pacification meetings," in inverted commas, where Joseph Nzabirinda was present as an "approving
20 spectator". The words "approving spectator" appear in inverted commas.

21
22 Joseph Nzabirinda is also charged with the murder of Joseph Mazimpaka killed near the Kabuga
23 roadblock, which he manned on two occasions after the 19th April 1994 at the request of the
24 authorities. The indictment alleges that in appearing beside the killers at the roadblock as an
25 "approving spectator", "approving spectator" is in inverted commas, the Accused encouraged the
26 murder.

27
28 On 12th December 2006, the parties filed a joint motion for consideration of a guilty plea and a plea
29 agreement between Joseph Nzabirinda and the Office of the Prosecutor.

30
31 On 14th December 2006, on his further appearance, Joseph Nzabirinda pleaded guilty to a single count
32 of crimes against humanity, pursuant to Article 3(A) and 6(1) of the Statute, namely; aiding and
33 abetting, murder by omission.

34
35 A pre-sentencing hearing was held on 17 January 2007. The Defence called five witnesses. The
36 written statements by two witnesses were admitted by the Chamber, pursuant to Rule 92 *bis* of the
37 Rules of Evidence and Procedure -- Rules of Procedure and Evidence.

1 The facts in support of the charges against Joseph Nzabirinda are outlined in the plea agreement.
2 Such supporting facts, as well as the indictment which Nzabirinda acknowledges to be true, constitute
3 the factual basis upon which the Trial Chamber will determine sentence. These facts are outlined in the
4 guilty plea as follows:

5
6 The guilty plea.

7
8 The Accused admitted that following the meeting held by President Sindikubwabo in Butare *préfecture*
9 on the 19th April 1994, widespread killings of Tutsi and opponents of the regime began in the *préfecture*
10 and, in particular, in Sahera *secteur*.

11
12 The Accused admitted that he attended several meetings at the Sahera *secteur* office where only Hutu
13 and killers that the Accused knew as his neighbours were present. He admitted that he was present at
14 such meetings as an "approving spectator." "Approving spectator" appears in inverted commas.

15
16 He further admitted that following the meetings, systematic attacks were launched on Tutsi families
17 living on his hill. He also admitted that during one attack Pierre Murara was murdered at a location
18 close to the meeting place where the Accused, Joseph Nzabirinda, was present as an "approving
19 spectator". "Approving spectator" appears in inverted commas.

20
21 Although he knew that systematic killings occurred after the meetings, the Accused never stopped
22 attending them, knowing that the purpose of the meeting was, in reality, to prepare and encourage the
23 hunting down and killing of Tutsi. At the meetings the Accused did not at any time or in any manner
24 openly object to these killings.

25
26 The Accused admitted that as a former youth organiser, political personality, intellectual and a relatively
27 affluent businessman, he did exert obvious moral authority over the population of his *secteur*, especially
28 its youth and over the country people living on his hill.

29
30 The Accused also admitted that his presence at the meetings had a decisive influence on the criminal
31 elements in their midst, as he was a person held in high esteem by his fellow citizens, and with the
32 circumstances prevailing in his *secteur*, conveyed the impression of his being an "approving spectator".
33 "Approving spectator" appears in inverted commas. He also knew that his silence would be considered
34 by the assailants as tacit approval of the preparations for the killings.

35
36 The Accused also admitted that after the 19th of April 1994, roadblocks were erected in his *secteur* and
37 that he knew that they were used for identity checks and were one of the means employed in the

1 campaign of killings in the secteur. That at the request of the authorities, he had manned the Kabuga
2 roadblock on two occasions along with the *Interahamwe* of Sahera *secteur*; that he had encouraged the
3 murder of Joseph Mazimpaka by Mugenzi near the Kabuga roadblock where the Accused was present
4 as an "approving spectator." "Approving spectator" is in inverted commas.

5
6 The Accused admitted that the murder of Joseph Mazimpaka and Pierre Murara were committed in his
7 *secteur* at a location close to those of the meetings and roadblocks respectively, where he was present
8 as an "approving spectator". "Approving spectator" appears in inverted commas.

9
10 On the basis of the facts admitted by the Accused, the Chamber was convinced that widespread and
11 systematic attacks had been carried out against the civilian population on discriminatory grounds in
12 Sahera *secteur* in April 1994.

13
14 The Chamber was also satisfied that the only logical conclusion to be drawn from the facts admitted by
15 the Accused was that both Pierre Murara and Joseph Mazimpaka were murdered as a result of these
16 attacks and because of their Tutsi ethnicity.

17
18 The Chamber was convinced that Joseph Nzabirinda knew that the *secteur* meetings which he
19 repeatedly attended and the Kabuga roadblock which he manned on two occasions were some of the
20 means employed in the campaign of killings. That the murders of Pierre Murara and Joseph Mazimpaka
21 were part of the widespread and systematic attacks against Tutsi civilians on ethnic grounds. That he
22 knew the criminal intent of the perpetrators of the murders. That because of the moral authority he
23 exercised, he knew that his presence at the Sahera *secteur* meetings and at the Kabuga roadblock
24 would be crucial in encouraging the preparation and the commission of the murders.

25
26 The Chamber found the Accused criminally responsible not only for the encouragement that he
27 provided as an "approving spectator", "approving spectator" is in inverted commas, at the preparatory
28 meeting but also for his attendance, as well as his presence as an "approving spectator" close to where
29 Pierre Murara and Joseph Mazimpaka were murdered. The words "approving spectator" appear in
30 inverted commas.

31
32 The Chamber held that the Accused was criminally responsible, pursuant to Article 6(1) of the Statute,
33 for aiding and abetting the murders of Pierre Murara and Joseph Mazimpaka in Sahera *secteur* in
34 April 1994. Consequently, the Chamber found the Accused guilty of murder as a crime against
35 humanity under Article 3(A) of the Statute.

36
37 On the applicability of the *non-bis in idem* based principle, the Chamber granted the Prosecutor's

1 request to withdraw four counts from the 13th December 2001 indictment while reserving its ruling on
2 the legal effect of such withdrawal, particularly in respect of the applicability of the *non-bis in idem*
3 principle. The Chamber shall now rule on this issue.

4
5 As the Appeals Chamber observed, the term 'tried' implies that proceedings in the national courts
6 constituted a trial for the acts covered by the indictment brought against the Accused by the Tribunal,
7 and at the end of which trial a final judgement is rendered. Accordingly, unless a person has been
8 indicted for crimes over which the Tribunal has jurisdiction resulting in a final judgement on the merits or
9 after fair, impartial and independent and diligent proceedings before a national court, the principle of
10 *non-bis in idem* would not apply.

11
12 In the instant case, the Chamber recalls -- in the instant case, the Chamber recalls that the charges
13 were withdrawn when the Prosecution sought to amend the indictment under Rule 50 of the Rules and
14 that a trial on the merits was yet to commence. The Chamber therefore denies the motion.

15
16 Regarding sentencing, the Chamber recalls that the Tribunal was established to prosecute the
17 perpetrators of the atrocities in Rwanda in 1994 so as to end impunity. This Tribunal was also created
18 to contribute to the process of national reconciliation, the restoration and maintenance of peace and to
19 ensure that violations of international humanitarian law in Rwanda were halted and effectively
20 redressed.

21
22 Both parties, Prosecution and Defence, recommended a term of imprisonment ranging from five to
23 eight years' imprisonment, with credit given for time already served by the Accused in detention. The
24 parties further recommended that the convict serves his sentence in a European country, preferably in
25 France.

26
27 The Chamber considered the following elements in sentencing: the gravity of the crime and the
28 aggravating and mitigating circumstances. On the gravity of the crime, the Chamber finds that
29 Nzabirinda's participation in aiding and abetting murder as a crime against humanity constitutes a very
30 serious offence and a gross violation of international humanitarian law.

31
32 On the aggravating circumstances, the Chamber finds the fact that Joseph Nzabirinda is an educated
33 person who could appreciate the dignity and value of human life, and the fact that he abused his moral
34 authority as aggravating circumstances in sentencing. Indeed, the Chamber considers that
35 Joseph Nzabirinda, a youth organiser, an intellectual and as a successful businessman held in high
36 esteem in the community had abused the obvious moral authority he exerted on the youth of his
37 *commune* and the population of his *secteur*.

1 The Chamber finds the following circumstances to be mitigating: Joseph Nzabirinda's guilty plea,
2 together with a public expression of remorse, his personal and family situation; he was a married man
3 with children as indicia of his chances of rehabilitation; his good character prior to the 1994 events, the
4 absence of a previous criminal record, his good conduct while in detention; and, finally, the assistance
5 he provided to certain Tutsi victims by way of moral, financial and material support in Sahera *secteur*
6 and in organising the departure of some of them to Burundi.

7
8 The Chamber does not accept the following circumstances in mitigation of the sentence:
9 Joseph Nzabirinda's offer to cooperate with the Prosecution, insofar as there has been no
10 demonstration of any substantial cooperation; Joseph Nzabirinda's form of participation in the criminal
11 acts and the alleged prevailing circumstances of necessity as the plea agreement, does not assert that
12 Joseph Nzabirinda was compelled under duress to a criminal conduct and is, at any rate, not
13 substantiated by any credible evidence.

14
15 While Joseph Nzabirinda's personal circumstances are relevant -- let me repeat.

16
17 While Joseph Nzabirinda's personal circumstances are relevant in the mitigation of the sentence, the
18 Chamber is of the view that such factors cannot play a significant role in mitigating international crimes.
19 *(Pages 1 to 6 by Sithembiso Moyo)*

1 1042H

2 MADAM PRESIDENT (*continuing*):

3 Moreover, the Chamber recalls that it did not accept in the instant case Joseph Nzabirinda's form of
4 participation as a mitigating circumstance. The Chamber considers that Joseph Nzabirinda's presence
5 at the scene of the crime amounts to a very serious form of participation that relates to a cognizant and
6 a positive choice.

7
8 The Chamber also considers that Joseph Nzabirinda did not disassociate himself from those who
9 organised the attacks during the *secteur* meetings which he attended, nor from the assailants who
10 murdered Joseph Mazimpaka near the roadblock that he manned.

11
12 The Chamber recalls that he never stopped attending the *secteur* meetings, even though he knew that
13 systematic killings had resulted from the first meeting, and that at no time did he, or in any manner,
14 openly object to the killings at such meetings.

15
16 The Chamber finds that Joseph Nzabirinda knew that his presence and moral authority would
17 encourage the killers to execute their crimes.

18
19 The Chamber has considered the general sentencing practice in Rwanda.

20
21 Here is our verdict.

22
23 Mr. Nzabirinda, can I now ask you to stand before the Bench, please.

24
25 Thank you. This is our verdict: The Trial Chamber, delivering its judgement in public in the presence of
26 the parties at the first instance, and in conformity with the statute and the rules, having accepted your
27 guilty plea, having considered all the evidence and heard the parties' arguments, you are hereby
28 sentenced on the single count of murder, as a crime against humanity, pursuant to Articles 3A and 61
29 of the statute, to 7 years imprisonment.

30
31 The Chamber further decides that you're entitled to credit for time served in detention as from the
32 21st of December 2001 to the date of this judgement.

33
34 The sentence shall run as of today, and you shall remain in the custody of the Tribunal pending a
35 decision where your sentence will be served by the President of the Tribunal, in consultation with the
36 Chamber.

37

1 We thank you. The hearing is adjourned.

2 *(Court adjourned at 1045H)*

3 *(Pages 7 to 8 by Ann Burum)*

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CERTIFICATE

We, Sithembiso Moyo and Ann Burum, Official Court Reporters for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

Sithembiso Moyo

Ann Burum