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ICTR-98-64-1
11-06-2010
(51428-91403)

THE HIGH COURT OF GASABO, SITTING IN KABUGA AND AT FIRST INSTANCE
IN A CRIMINAL MATTER RELATING TO DETENTION AND PROVISIONAL
RELEASE IN CASE No. RONPJO678/KgI/NM, RENDERED ON THIS 7TH DAY OF
JUNE 2010 THE FOLLOWING DECISION:

CASE

THE PUBLIC PROSECUTOR of the High Court of Gasabo

Versus

ACCUSED: Carl Peter Erlinder, son of Atwood Erlinder and Jane Lois Bihl, born on 14 April
1948 in Chicago, Illinois, married to Masako Isui, Professor of Law in Minnesota, USA.

JUDICIAL RECORDS ARCHIVE
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COUNTS

1. Denying and minimizing genocide in his various writings and speeches. This offence is provided for and punishable under Article 4 of Law No. 33bis/2003 of 6 September 2003 punishing the crime of genocide, crimes against humanity and war crimes.

Translation certified by LSS, ICTR

2. Spreading rumours likely to disrupt the security of Rwandans. This offence is provided for and punishable under Article 166 of Legislative Decree No. 21/77 of 18 August 1977 establishing the Penal Code.

I. FACTS

1. After the questioning of Carl Peter Erlinder by the judicial police and the Public Prosecutor, the Legal Officer at the High Court of Gasabo established an arrest warrant against the Accused.
2. In his letter to the President of the High Court of Gasabo, the Chief of Prosecutions at the High Court of Gasabo requested the appearance of Carl Peter Erlinder, charged with the offences mentioned of above, before the judge's chambers.
3. By Order of 4 June 2010, the President scheduled the hearing for 4 June 2010.

II. PROCEDURE

4. On 4 June 2010, the Public Prosecutor, represented by Richard Muhumuza, and Carl Peter Erlinder, assisted by Messrs Gershom Otachi Bw'Omanwa, Kenned (*sic*) Ogeto, Kurt P. Kerns, Jean-Bosco Kazungu, Gatera Gashabana, Donatien Mucyo, Shoshi

Bizimana, Ms Amida Furaha and Mr Pierre-Célestin Buhuru, entered an appearance. Interpretation was done by Elisée Byukusenge.

4. [sic] The Accused, Carl Peter Erlinder, confirmed his identity which was read to him. Prosecution Counsel requested to make his submissions in English to enable the Accused to better understand the charges against him. A copy of the submissions was handed over to the Accused. He stated that his submissions were pursuant to Articles 93 and of Law No. 13/2004 of 17 May 2004 establishing the Criminal Procedure Code, as modified and complemented by Law No. 20/2006 of 22 April 2006, because he [Carl Peter Erlinder] was charged with denying and minimizing genocide in his statements, and of spreading rumours likely to disrupt the security of Rwandans.
5. At the request of Mr Kazungu, Carl Peter Erlinder, was authorized to sit down as he was not feeling well.
6. Prosecution Counsel submitted that there was prima facie evidence of guilt against Carl Peter Erlinder in his writings and speeches. He mentioned, for example, Carl Peter Erlinder's written work of 2 February 2009. He further stated that recently in 2008, the Accused stated that 40 dignitaries of the Kagame administration were the subject of investigations after that conducted by France in 2006, which resulted in the indictment of the authorities who killed the Rwandan President. Prosecution Counsel affirmed that the Accused stated that what happened in 1994 was a civil war. He stated that the Accused

denied the genocide while insisting that the death of the Presidents of Rwanda and Burundi triggered the killings, whereas it has been established that the genocide had been planned by the Habyarimana regime and executed by Sindikubwabo and Kambanda. He stated that the Accused, without providing any evidence in support thereof, also spread rumours that Rwandan authorities were responsible for the murder of the Presidents of Rwanda and Burundi. He submitted that, pursuant to Article 166 of the Penal Code, Book II, this statement disrupted the peace of Rwandans and was likely to stir up the citizens and rouse them against the current regime.

7. Whereas the genocide was planned, under the MRND regime, by the *Interahamwe* who drew up lists of Tutsi and Hutu who had to be killed, Carl Peter Erlinder denied and minimized the genocide in *Military I*, in which he was ICTR Defence Counsel. Carl Peter Erlinder denied and minimized the genocide by stating that the soldiers he was defending neither planned nor carried out the genocide. The Accused affirmed that his clients were rather defending national integrity. Prosecution Counsel submitted that the Accused did not end there, as he denied and minimized the genocide in other cases.
8. Prosecution Counsel showed that in his piece of writing entitled, “*no genocide planning, no genocide*”, Carl Peter Erlinder stated that, had it not been for the policy of impunity practised in the United States of America, Kagame would already have been tried and punished instead of looting the riches of the Congo and spilling the blood of Rwandans. While he was Defence Counsel at the International Criminal Tribunal for Rwanda, Carl

Peter Erlinder submitted that that what happened was a massacre of members of the population.

9. Prosecution Counsel submitted that in his submissions before an Oklahoma court, Carl Peter Erlinder stated that he was not denying the killings that were committed by RPF soldiers targeting the Hutu or the Tutsi. He stated that the Accused submitted that the killings were not committed by the then regime prior to the genocide, that they were rather comparable to those committed in Burundi, and that the killings in Rwanda were triggered by the murder of the second and third Hutu presidents. The Accused also minimized the genocide of the Tutsi by affirming that some people described the genocide as the Rwandan tragedy. However, the ICTR has evidence which shows that the genocide was planned and executed by the regime of President Habyarimana.
10. Prosecution Counsel further submitted that Carl Peter Erlinder has stated in his writings that some people describe the genocide as the Rwandan tragedy. He submitted that The Accused also minimized the genocide of the Tutsi by affirming that this concept is used as pretext by the Rwandan State. Elsewhere in his writings, the Accused considers the genocide as a war and, even in the *Military I* case, he submitted that the killings committed against the Tutsi in 1994 did not constitute genocide. He further states that in Rwanda, this issue is being used as a hurdle against those who want to challenge Kagame during the 2010 elections.

11. In his written piece of 6 May 2010 which he described as “public”, Carl Peter Erlinder stated that some UN documents show that it was Kagame who triggered the Rwandan genocide and the killings in the east of the Democratic Republic of Congo. In so doing, he expressed his negation of history in attempting to deny the genocide, a word he writes in quotation marks, whereas the international community uses it and has accepted that there was genocide. In the *Edouard Karemera* case before the ICTR, the Chamber stated that the genocide of the Tutsi no longer raises doubt. However, Carl Peter Erlinder ignores this decision and wants to make Rwandans believe that the Head of State committed genocide. Moreover, in his letter of 6 April 2006 to the Prime Minister of Canada relating to the visit she was going to make to the current President of Rwanda, Carl Peter Erlinder sought to stir up members of the Rwandan population against each other, referring to the Kagame regime as the most dictatorial in Africa, in violation of Article 166 of Legislative Decree No. 21/77 of 18 August 1977 establishing the Penal Code.
12. Considering his various writings and pursuant to Articles 93 and 94 of Law No. 13/2004 of 17 May 2004 relating to the Code of Criminal Procedure as modified and complemented by Law No. 20/2006 of 22 April 2006, the Public Prosecutor prayed the Court to take into account the prima facie evidence resulting from the writings of Carl Peter Erlinder and to order his provisional detention, especially as that was the only guarantee that the Accused would appear before the Court whenever necessary and that he would not escape from justice.

13. Carl Peter Erlinder pleaded not guilty to all the charges against him. He stated that in all his writings he never spoke ill of Rwanda. Given that his writings were drafted in English, he prayed the Court to appreciate their value, adding that his writings would pose no problem even if they were translated into French or Kinyarwanda. He stated that it was incumbent upon the Public Prosecutor to prove that his writings had caused problems. He specified that his writings do not violate any law in force in the United States of America, or the Constitution of that country or the laws of the Commonwealth of which Rwanda is a member. He explained that he had no intention of causing trouble in Rwanda, specifying that the expressed opinions for which he was being prosecuted were public knowledge and that he was ready to explain himself.
14. Carl Peter Erlinder stated that only FPR leaders doubt the truth of his writings. He recalled that he came to Rwanda in September 2004 and returned there in 2010 to defend a candidate for the presidency who had trouble with the law. He added that his colleagues had advised him not to go to Rwanda, warning him that he could be arrested. However, as he had information that Rwanda was a democratic country, he decided to go there. He stated that he was arrested whereas he committed no offence when he got to Rwanda. Moreover, he said nothing in French or in Kinyarwanda. However, he stated that he was optimistic about the decision which the Court was going to render, given that he had noticed changes in many areas in Rwanda. He stated that he was not accusing anybody and expressed gratitude for the assistance granted him.

15. Carl Peter Erlinder expressed his concerns about the type of care he would receive in prison as an elderly white man. He assured the Court that he would comply with all its orders. He added that his provisional detention had traumatized him and prayed the Court to grant him provisional release so that he could receive treatment in the United States of America.
16. Carl Peter Erlinder stated that he acknowledged that genocide was committed but that he knew nothing about its planning, as he was not in Rwanda at the time of the events. He explained that this arose from the Judgment rendered by the ICTR in the “*Military*” cases, and that it was not incumbent on him to say whether the genocide was planned.
17. Mr Jean Bosco Kazungu, Counsel for Carl Peter Erlinder, first thank the Court for having listened to the Accused and for having given the floor to the Defence. He pointed out that the Defence was not in possession of the case-file. He prayed the Court to grant his client’s request to enter an appearance as a free man pursuant to Article 87 of Law No. 13/2004 of 17 May 2004 relating to the Code of Criminal Procedure as modified and complemented by Law No. 20/2006 of 22 April 2006, while the Prosecution was investigating the case. If need be, the Court could impose restrictive measures on the Accused as provided for under Article 90 of the said law, especially as the Accused had been hospitalized for two days. He insisted that his client was showing obvious signs of weakness, that he had cooperated with the authorities who arrested him and that he was

advanced in age. In conclusion, he prayed the Court to be guided by the precedent established in the *Victoire Ingabire* case.

18. Mr Kurt P. Kerns submitted that his client had committed no offence, granted that he had made no statement on Rwandan territory. He submitted that the Accused had violated no law in force in Rwanda and added that the problem in question arose from the manner in which people had construed the remarks that were made. He stated that Erlinder had neither denied nor minimized the genocide, specifying that the mere fact of having placed the word “genocide” in quotation marks or of having used the expression “killings” in lieu of “genocide” did not mean that genocide of the Tutsi did not take place. He added that had the Accused committed these offences, he would not have ventured to come to Rwanda.
19. Mr P. Kerns submitted that the Prosecution’s allegations were based only on rumours and that releasing his client would be without consequences. He prayed the Court to grant the Accused the same opportunity as was granted to the client that he had come to defend.
20. After hailing Rwanda for its characteristic freedom, Mr Kennedy Ogetto submitted that his client was being prosecuted for the writings in an academic context and added that he [his client] respected Rwanda and Rwandans. He stated that his client had difficulty understanding that he was taken for somebody who minimizes the genocide, on the basis of his writings. He explained that the issue at stake arose from the fact the Prosecution

took excerpts from Erlinder's writings and construed them in its own way. He specified that that the Accused had neither denied the planning of genocide nor its execution. He recalled that in the "*Military I*" case before the ICTR on 9 February 2009, the Chamber found that the soldiers concerned were not guilty of planning genocide. The Accused did not therefore dispute the Chamber's decision, given that in that trial the planning and execution of genocide was not established.

21. Mr Kennedy Ogetto further submitted that the Prosecution was not telling the truth when it alleged that in his letter of 6 June 2006 to the Prime Minister of Canada, Peter Erlinder stated that Kagame's regime was the most dictatorial in Africa. Proof was that a paragraph of that letter showed that his writings were excerpts from the journal "Economics Magazine". Thus he could not be held liable for anything, granted that he only reproduced the excerpts from the journal. The allegations against him had no connection with the ideas he had wanted to express. In their writings, the former Prosecutor of the ICTR, Carla Del Ponte, and Michel H., who was a member of the Office of the Prosecutor at the ICTR, dealt with this matter. He pointed out that the writings published by Peter Erlinder came from a well-known source and wondered why the Prosecution was targeting only his client. He submitted that the prosecution of his client was not based on his writings, but was rather motivated by the fact that his client defended very well the accused persons before the ICTR, and by the case of the Rwandan President.

22. Lastly, Mr Kennedy Ogetto prayed the Court to dismiss the Prosecution's request because it had not presented prima facie evidence of guilt likely to justify the provisional detention of Erlinder. He submitted that the Prosecution had not indicated the facts of the investigations it had carried out and that it only wanted to take advantage of the presence of his client in Rwanda to have him convicted.
23. Taking the floor, Mr Gershom Otachi Bw'Omanwa started by thanking the Rwandan courts. He then requested the provisional release of Peter Erlinder on the ground that the Prosecution had finished questioning him on the offences charged, and which were based on the writings that he had published on the internet. He submitted that the problem was the interpretation that had been made of the writings and stated that Peter Erlinder could always explain them while he was free. Moreover, he further stated that releasing the Accused would allow him to continue to deal with the case-files of his clients who are being prosecuted before the ICTR.
24. Prosecution Counsel submitted that the arrest and detention of Carl Peter Erlinder had nothing to do with his coming to Rwanda to defend his client or with his status of Defence Counsel at the ICTR. He further submitted that the Accused was rather arrested for offences committed and for which he had been brought before the Court. As to the allegations by his Counsel that they could not have the case-file, Prosecution Counsel stated that they should have requested it before. On this point, the Court recalled that the Defence had not shown any prejudice suffered.