

ICTR-98-44-T
03-06-2010
(51126-51121)

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 3 June 2010

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
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SUPPLEMENTAL SUBMISSION:
JOSEPH NZIRORERA'S MOTION FOR
CONTINUANCE: ARREST OF PETER ERLINDER

The Office of the Prosecutor:

Mr. Don Webster
Mr. Takeh Sendze

Defence Counsel:

Mr. Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. On 31 May 2010, Joseph Nzirorera respectfully moved the Trial Chamber to cancel the three day sitting during the week of 7 June 2010 due to the arrest of ICTR Lead Counsel Peter Erlinder in Rwanda.

2. In the motion, Mr. Nzirorera said:

Mr. Nzirorera's defence team deems that it is no longer safe to advocate for an accused person at this Tribunal. Its members do not wish to subject themselves to prosecution in Rwanda, which could lead to Interpol arrest warrants as well as Bar disciplinary proceedings, simply for doing their jobs. Therefore, the defence team of Mr. Nzirorera is not in a position to proceed with his trial until matters relating to Mr. Erlinder's arrest are clarified and resolved.

3. Mr. Nzirorera attached to his motion an article from the New York Times in which quoted a spokesman for the Rwandan government as saying that Mr. Erlinder was accused of "denying the genocide" and "negationism" **from statements he had made at the tribunal in Arusha**, as well as "in his books, in publications." (emphasis added)¹

4. On 2 June 2010, further statements were made by representatives of the government of Rwanda which re-enforce the position of Mr. Nzirorera's defence team. The New York Times reported that:

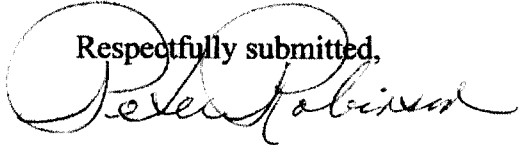
"At that tribunal, Mr. Erlinder, who represented a top genocide suspect, disputed the standard characterization of the bloodshed in Rwanda as Hutu victimizers slaughtering innocent Tutsis. Instead, he said that the violence was more spontaneous and possibly the result of Tutsi rebels killing Hutu civilians. He even went as far to say that the Tutsi rebels, who now rule Rwanda, assassinated Rwanda's president in 1994, the event that set off the widespread murder.

Martin Ngoga, Rwanda's prosecutor general, called Mr. Erlinder a "denier" and "revisionist" of the genocide and said **it did not matter where the offensive remarks were made.**

¹ The entire article was reproduced as Annex "A" to the motion.

“We have jurisdictional links for statements and publications done outside Rwanda,” Mr. Ngoga said. (emphasis added)²

5. The Trial Chamber is respectfully requested to grant the motion.

Respectfully submitted,

PETER ROBINSON
Lead Counsel for Joseph Nzirorera

² The entire article is reproduced as Annex “B” to this Supplemental Submission.

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ANNEX "B"

Rwanda Says Jailed American Tried to Kill Himself

By JEFFREY GETTLEMAN and JOSH KRON

Published: June 2, 2010

NAIROBI, Kenya — The American lawyer jailed by the authorities in Rwanda last week on charges of espousing genocide ideology tried to kill himself with a pill overdose in his cell, officials there said Wednesday, and he now may face a new charge under Rwandan law: attempted suicide.

Rwandan police officials said that when they checked Wednesday morning on the prisoner, Peter Erlinder, an American law professor who recently arrived in Rwanda to represent an opposition politician, they found him slumped in his cell, nearly unconscious.

Police officials said that Mr. Erlinder, who faces 25 years in prison if convicted of spreading genocide ideology, had swallowed a handful of prescription medication pills before he was going to be subjected to more police interrogations.

“When we asked him why, he said he wanted to commit suicide,” said an Rwandan police spokesman, Eric Kayiranga, in a telephone interview. “He knows the charges against him, he knows the weight of the sentence.”

Rwanda, a close American ally that has received hundreds of millions of dollars of American aid, is tightening restrictions on political opponents and critics of the government in the prelude to elections in August, several human rights groups have said. No subject seems to be touchier than the genocide in 1994, in which hundreds of thousands of minority Tutsis and moderate Hutus were massacred by government-backed death squads. In recent years, thousands of Rwandans have been charged with genocide ideology, an Orwellian-sounding and vaguely defined crime often leveled against anyone who challenges the government’s version of events in 1994.

But Mr. Erlinder’s case is the first time Rwanda has leveled such charges against a Westerner. And the charges against Mr. Erlinder, 62, seem to have nothing to do with what he may have said or done in Rwanda, but more so from his earlier work as a defense lawyer at a United Nations-backed tribunal in Tanzania.

At that tribunal, Mr. Erlinder, who represented a top genocide suspect, disputed the standard characterization of the bloodshed in Rwanda as Hutu victimizers slaughtering innocent Tutsis. Instead, he said that the violence was more

spontaneous and possibly the result of Tutsi rebels killing Hutu civilians. He even went as far to say that the Tutsi rebels, who now rule Rwanda, assassinated Rwanda's president in 1994, the event that set off the widespread murder.

Martin Ngoga, Rwanda's prosecutor general, called Mr. Erlinder a "denier" and "revisionist" of the genocide and said it did not matter where the offensive remarks were made.

"We have jurisdictional links for statements and publications done outside Rwanda," Mr. Ngoga said.

Mr. Erlinder's family is outraged about his incarceration and upset that the United States Embassy in the Rwanda capital Kigali, which refused to comment on the matter, is not doing more to help.

"The U.N. hired him to be an advocate," said his daughter, Sarah Erlinder, a lawyer in Minnesota. "Now he is being held for exactly what he said and did for the job."

She said that her father, who is now in a hospital in Kigali, suffered from high blood pressure and a congenital heart defect and that she doubts he would have tried to commit suicide, which the Rwandan police spokesman was quick to point out is a crime, though it is not clear if attempted suicide is a crime under current Rwandan law or may soon be a crime under a proposed penal code.

Mr. Erlinder, a professor at William Mitchell College of Law in St. Paul, was one of the more outspoken defense lawyers at the international tribunal, colleagues said, and he saw his job as knocking down the conventional view of the genocide and showing that it was a two-sided fight, with two-sided war crimes.

He came to Rwanda in late May to represent Victoire Ingabire, an opposition politician who has also been recently charged with espousing genocide ideology. He was arrested on Friday.

"Imagine a civil rights crusader in the 1960s," said Alan J. Kuperman, a political science professor at the University of Texas who knows Mr. Erlinder through research on Rwanda. "That's how he sees himself, that there's this great conspiracy out there and he's the only one speaking the truth."

Jeffrey Gettleman reported from Nairobi, and Josh Kron from Kampala, Uganda

