

ICTR-96-13-T
21.4.1999
(1210-1206)

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Case No. ICTR-96-13-T



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

TRIAL CHAMBER I

OR:ENG

Before: Judge Lennart Aspegren, Presiding
Judge Laïty Kama
Judge Navanethem Pillay

Registry: Ms Marianne Ben Salimo

Decision of: 20 April 1999

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**THE PROSECUTOR
VERSUS
ALFRED MUSEMA**

Case No. ICTR-96-13-T

**DECISION ON THE PROSECUTOR'S REQUEST
FOR LEAVE TO CALL SIX NEW WITNESSES**

The Office of the Prosecutor:

Ms Jane Anywar Adong
Mr. Charles Adeogun-Phillips
Ms Holo Makwaia

Counsel for the Accused:

Mr. Steven Kay QC
Prof. Michail Wladimiroff

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

1. Trial Chamber I of the Tribunal, composed of Judge Lennart Aspegren, presiding, Judge Laity Kama and Judge Navanethem Pillay, has received, in the case "The Prosecutor v. Alfred Musema" (Case No. ICTR-96-13-T), a motion from the Prosecutor, dated 13 April 1999, for leave to vary her initial list of witnesses as contained in her Pre-trial brief filed on 19 November 1998. Additionally, the Prosecutor is seeking an extension of time with which to conclude the presentation of her case. The Defence response was received by the Trial Chamber on 15 April 1999.

2. The Trial Chamber has informed the parties that a decision would be rendered on the basis of written submissions and documents only. The parties did not object to this. Consequently, deliberations will be based on the written submissions received by the parties and on other documents to which reference has been made.

3. Thus, the matters before the Tribunal are:

- the addition of five factual witnesses to the initial list;
- the addition of an expert witness;
- an extension of time for the presentation of the Prosecutor's case.

Five new factual witnesses*The Prosecutor*

4. The Prosecutor is seeking to vary her initial witness list of witnesses on the basis of Rule 73bis (E) of the Rules of Procedure and Evidence of the Tribunal ("the Rules"). This Rule requires that the Prosecutor considers the varying of the list to be in the interests of justice. This implicitly entails that the Prosecutor must demonstrate why the variation of the list is in the interests of justice.

5. The Prosecutor wishes to add five factual witnesses to the initial list, namely witnesses bearing the pseudonyms *M*, *N*, *AB*, *AD* and *AE*. The witness statements of the first three of these have previously been disclosed, whereas those of *AD* and *AE* are annexed to the motion.

6. The Prosecutor submits that investigations which have been ongoing since the beginning of the trial have unearthed new evidence which reflect the totality of the alleged criminal conduct of the accused. Further she argues that the testimonies of the additional witnesses relate not only to the individual conduct of the accused but also show how these acts were perpetrated in furtherance of a conspiracy at national level. The Prosecutor contends that the need for her to present the full scope of available evidence must be balanced against any resultant delay in the proceedings that may result from granting the instant request. In conclusion, the Prosecutor argues that to be denied leave to vary her witness list will cause irreparable prejudice to her case.

The Defence

7. In response, the Defence contests that the addition of these five witnesses would unduly delay the proceedings in this case and prejudice the presentation of the case of the Defence which is scheduled to commence on 3 May 1999. The Defence submits that the Trial Chamber should order the Prosecutor to call only the five previously scheduled witnesses or sufficient witnesses to occupy one more week of court time, whichever is the shortest.

The expert witness*The Prosecutor*

8. The Prosecutor requests leave to vary her initial witness list by adding the particulars of one expert witness she intends to call in the instant case. The Prosecutor submits that the report of this expert witness having already been disclosed to the accused, no prejudice will be suffered by the accused as a result of the addition of the witness as he has had ample notice of the testimony. She further contends that the addition of this witness is in the interests of justice and allows the Prosecutor to show that the crimes of the accused were also committed in the context of a conspiracy at national level.

The Defence

9. The Defence reiterates its arguments as summarized in paragraph 7 above. The Defence Counsel recalls his admissions made in response to the Prosecutor's request to admit, and submits that these admissions provide the essential framework for the Tribunal from which it may move to determine participation in the acts alleged in the indictment by the accused. He adds that these admissions were provided so as to dispense with expert evidence in the case, and so as to enable the Tribunal to deal with the real issues concerning the accused.

The time for the presentation of the Prosecutor's case*The Prosecutor*

10. The Prosecutor seeks an additional period of two weeks within which to conclude the presentation of her case. She argues that in deciding whether the variation of the witness list will cause unreasonable delay, the Tribunal should consider the seriousness of the crimes charged and the difficulties and complexities of investigating and prosecuting cases involving crimes committed on a very large scale.

The Defence

11. The Defence objects to the requested additional two week period on the basis that this additional period would be at the expense of time available to the Defence, considering that arrangements pertaining to the presentation of the Defence are at an advanced stage.

The Tribunal

12. The Prosecutor, in her request, differentiated between, on the one hand, witnesses “M”, “N”, and “AB”, whose statements have previously been disclosed but did not appear on the initial list and, on the other hand, witnesses “AD” and “AE” whose statements were annexed to the motion and who did not appear on the initial witness list. The Tribunal notes that, pursuant to Rule 73bis (E) of the Rules, the document of interest in this matter is the list of witnesses filed in accordance Rule 73bis (B)(iv). Disclosure of witness statements cannot be interpreted to mean that the concerned witnesses are to be called by the disclosing party. Rule 73bis (B)(iv) is thus clear in this respect. One cannot therefore, as pertains to the request to vary the initial witness list, differentiate between witnesses on the basis of disclosure of their statements.

Factual witnesses

13. As mentioned *supra*, pursuant to Rule 73bis (E), the initial list of witnesses may be varied if the Tribunal considers it to be in the interests of justice. The Tribunal has therefore considered the submissions of the parties, and the summaries of the witnesses’ testimony presented by the Prosecutor, reading these summaries in conjunction with the indictment against the accused and the specific acts alleged therein. Furthermore, the Tribunal recalls that by virtue of Rule 73bis (C), it may, *inter alia*, order the Prosecutor to shorten the examination-in-chief of some witnesses.

14. Consequently the Tribunal finds that it is in the interests of justice to allow the Prosecutor to vary her initial witness lists by calling witnesses “N”, “M”, “AB”, and “AD”. The Tribunal finds moreover, that the testimony of witness “AD” shall be limited to direct evidence, namely events the witness personally saw or of which he otherwise has direct knowledge through his own observations.

15. The Tribunal notes that the statement of witness “AE” does not constitute direct eye-witness testimony of the events and therefore is not convinced that it would be in the interests of justice to hear witness “AE”.

Expert witness

16. The Tribunal has considered the content of the expert statement filed by the Prosecutor on 9 April 1999. In so doing, it has referred to the written admissions of the Defence filed on 30 March 1999 in response to the Prosecutor’s request to admit. At present, and bearing in mind the allegations contained in the indictment, the Tribunal is not convinced that, in the determination of the case, it needs to hear the expert witness or to admit into evidence the expert statement tendered by the Prosecutor.

17. Notwithstanding the above, if the Prosecutor still believes that it is necessary for her case to hear the expert witness, it is incumbent on her to demonstrate such need and to relate the expert evidence to specific allegations in the indictment.

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Time for the presentation of the Prosecutor's case

18. The Tribunal has noted the submissions of the parties in light of their right to both a fair and an expeditious trial. The issue of the time necessary for the presentation of the Prosecutor's case shall be dealt with during a status conference held to that end.

FOR ALL THE ABOVE REASONS,

THE TRIBUNAL

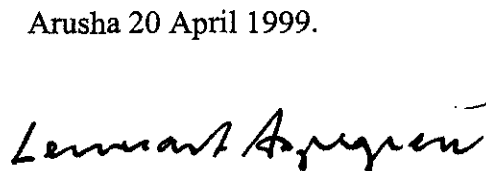
GRANTS leave to the Prosecutor to vary her initial list of witnesses by adding witnesses "N", "M", "AB" and "AD";

DENIES leave to the Prosecutor to vary her initial list of witnesses by adding witness "AE";

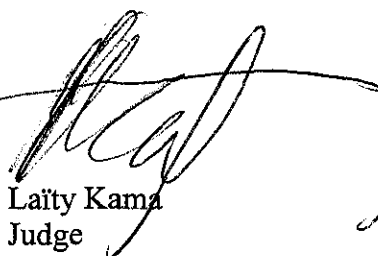
NOTES, accordingly, that there remain eight factual prosecution witnesses, namely "G", "I", "L", "Q", "N", "M", "AB" and "AD";

DENIES leave to the Prosecutor to call the expert witness or to tender his statement into evidence.

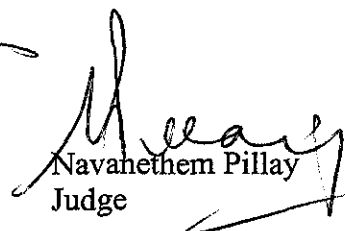
Arusha 20 April 1999.



Lennart Aspegren
Presiding Judge



Laity Kama
Judge



Navanethem Pillay
Judge

(Seal of the Tribunal)