

TRIAL CHAMBER III

Original: English

Before: Judge Yakov Ostrovsky, Presiding Judge Lloyd George Williams Judge Pavel Dolenc

Registrar: Mr. Adama Dieng

Decision of: 6 September 2001

THE PROSECUTOR versus LAURENT SEMANZA

Case No. ICTR-97-20-T

DECISION ON THE DEFENCE MOTION FOR ORDERS CALLING PROSECUTION WITNESS VZ LISTED IN PROSECUTION WITNESS LIST OF NOVEMBER 2000; PROSECUTION WITNESS VL, VH AND VK LISTED IN SUPPORTING MATERIAL TO THE THIRD AMENDED INDICTMENT TO TESTIFY; IN THE ALTERNATIVE ADMIT THE STATEMENTS OF THE SAID WITNESSES IN UNREDACTED FORM IN EVIDENCE IN THE INTEREST OF JUSTICE PURSUANT TO RULES 54, 68 AND 98 OF THE RULES OF PROCEDURE AND EVIDENCE

Counsel for the Prosecutor: Mr. Chile Eboe-Osuji Ms. Amanda Reichman

Counsel for the Accused: Mr. Charles A. Taku Mr. Sadikou Ayo Alao

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

SITTING as Trial Chamber III composed of Judge Yakov Ostrovsky, presiding, Judge Lloyd George Williams, and Judge Pavel Dolenc (the "Chamber");

BEING SEIZED of the Defence Motion for Orders Calling Prosecution Witness VZ Listed in Prosecution Witness List of November 2000; Prosecution Witness VL, VH and VK Listed in Supporting Material to the Third Amended Indictment to Testify; in the Alternative Admit the Statements of the Said Witness in Unredacted Form in Evidence in the Interest of Justice Pursuant to Rules 54, 68 and 98 of the Rules of Procedure and Evidence, filed on 20 July 2001 (the "Motion");

CONSIDERING the Prosecutor's Response to the Motion, filed on 25 July 2001;

NOW CONSIDERS the matter without a hearing solely on the briefs of the parties, pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Tribunal.

PLEADINGS BY THE PARTIES

Defence Submissions

1. The Defence submits that the Prosecutor failed to comply with Rule 73*bis*(E) because witness VZ was listed as a witness in the "Prosecutor's Amended Schedule of Witness Order, Anticipated Length of Witness Testimony, and Counts of the Indictment on which Each Witness Will Testify", filed 3 November 2000 (the "Amended Schedule of Witnesses"), but was not called to testify.

2. The Defence argues that the witness statement of witness VZ is exculpatory because it provides "direct evidence of his non participation and non presence" at Musha Church and during other events. The statement of witness VZ contradicts the testimonies of witness VA and VM and casts doubt on them.

3. The Defence also submits that the redacted statements of witnesses VL, VH, and VK contradict numerous points set out in the Third Amended Indictment and that these statements are exculpatory.

4. Consequently, the Defence requests the Chamber to call witnesses VZ, VL, VH, and VK to testify or, in the alternative, to admit their unredacted statements into evidence.

Prosecutor's Response

5. The Prosecutor opposes this Motion and submits that it lacks sufficient specificity for the Prosecution to respond. In the alternative, the Prosecutor seeks to require the Defence to explicitly set out the particulars of all alleged contradictions.

FINDINGS

6. The Defence bases its Motion on Rules 54, 68, and 98. However, Rule 98 confers power on the Chamber to order production of additional evidence acting *proprio motu*. Rule 98 is therefore solely at the disposal of the Chamber, acting in its own deliberative discretion. It is not a Rule upon which parties may rely in seeking to bring evidence before the Tribunal.

7. Rule 68 provides that the Prosecutor, as soon as practicable, disclose to the Defence the existence of evidence known to her which may in any way be exculpatory. Whether or not the witness statements of witnesses VZ, VL, VH, and VK may in any way be exculpatory, the Prosecutor has clearly disclosed their existence to the Defence. It is now a matter for the Defence how it chooses to make use of the information contained in these statements. There having been no allegation of a violation of Rule 68 in the Motion, the Defence could not have justifiably invoked this Rule as a legal basis therefor.

8. On the other hand, Rule 54 contains a general provision in respect of matters including orders and is a valid basis for the present Motion. The Chamber now must consider the factual basis for the Motion. Witnesses VL, VH, and VK do not appear on the Prosecutor's Amended Schedule of Witnesses. Clearly, the Prosecutor is under no obligation to call witnesses she has not included in her list of witnesses whom she intends to call. If the Defence wishes to obtain evidence from these witnesses, it is entitled to call them to testify as part of its case.

9. Witness VZ is included in the Prosecutor's Amended Schedule of Witnesses. However, during a Status Conference held in this case on 21 March 2001, the Prosecutor has informed the Chamber and the Defence that witness VZ has refused to appear before the Tribunal in order to testify in the present case. *See* Transcript, page 3. The Prosecutor clearly stated at that time that she will not "trouble the Court with an order compelling" VZ to attend. *Id.* Moreover, at the hearing on 25 April 2001, the Prosecutor acknowledged the need to take the necessary action to remove witness VZ from the list of witnesses. *See* Transcript, page 187. According to Rule 73*bis*(E) as it was then, in order to remove witness VZ from the list of witnesses, the Prosecutor should have filed a motion to vary the list. That Rule has been subsequently amended so that the Prosecutor may move orally. Nevertheless, the fact remains that VZ refused to testify before the Tribunal. Again, if the Defence wishes to obtain evidence from witness VZ, it can seek to bring him/her before the Tribunal to testify as part of its case.

10. Finally, the Chamber is not persuaded that it would be in the interest of justice to take the witness statements of the said witnesses and admit them into evidence in the present case. Such statements in and of themselves would have very little probative value and would not help the Chamber in deliberating upon the Judgement.

FOR THESE REASONS, THE TRIBUNAL

11. **DENIES** the Motion subject to the Prosecutor's action to remove witness VZ from the list of witnesses at the next sitting of the Chamber in this case.

Arusha, 6 September 2001.

Yakov Ostrovsky	Lloyd George Williams	Pavel Dolenc
Judge, presiding	Judge	Judge

[Seal of the Tribunal]