



ICTR-99-54A-T
6-2-2002
(820-816)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramarason

Registrar: Adama Dieng

Date: 6 February 2002

The PROSECUTOR v. Jean de Dieu KAMUHANDA

Case No. ICTR-99-54A-T

**DECISION ON THE PROSECUTOR'S MOTION TO ADD
WITNESSES GKI, GKJ AND GKL**

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

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Winston C. Matanzima Maqutu and Arlette Ramaroson, (the "Chamber");

BEING SEIZED of:

- (i) the "Prosecutor's Motion to Add Witnesses GKI, GKJ and GKL," filed on 16 January 2002 (the "Motion");
- (ii) "Conclusions en réponse à la Requête du procureur en modification de sa liste de témoins," filed by the Defense on 24 January 2002 (the "Defense Response");
- (iii) "Addendum to the Prosecutor's Motion to Add Witnesses GKI, GKJ and GKL," filed on 24 January 2002 (the "Addendum");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules") in particular Rules 54, 73, 73bis(B) of the Rules;

HAVING HEARD the Parties on 28 January 2002, the Chamber now decides the Motion;

SUBMISSIONS OF THE PARTIES

Prosecutor's Submissions

1. The Prosecutor requests leave of the Chamber to add witnesses GKI, GKJ and GKL to her list of Prosecution witnesses, relying on Rules 54, 73 and 73bis of the Rules. The Prosecutor submits that the Defense received notice of her intention to modify her list of witnesses on 19 October and 5 November 2001, when she respectively met with the Defense and disclosed the redacted witnesses' statements to them. The Prosecutor maintains that she finally disclosed the unredacted version of the statements of the said witnesses to the Defense on 7 January 2001. It is the Prosecutor's contention that sufficient notice of her intention to call GKI, GKJ and GKL to testify was given to the Defense to allow them to adequately prepare their defense, so that there was no element of surprise.

2. The Prosecutor further maintains that the testimony of the three witnesses is material because it is the best available evidence. In support of her contention, the Prosecutor makes specific reference to her Addendum, which gives a summary of the expected testimony.

3. Finally, the Prosecutor maintains that the evidence of GKJ, GKL and GKI will not hinder the right of the Accused to a trial without undue delay. Thus, the Prosecutor submits that the addition of GKI, GKJ and GKL to her list of witnesses is in the interests of justice and will cause no prejudice to the Accused.

Defense Submissions

4. The Defense requests that the Motion be dismissed or, in the alternative, if the Motion is granted, that they should be given sufficient time to prepare and that the said witnesses should testify during the next trial session in May 2002. The Defense submits that when the Prosecutor informed the Defense of her intention to modify her list of witnesses, she did not do so formally and only filed the present Motion on 16 January 2002. The Defense submit that such a late request for modification and subsequent authorization to call the said

witnesses during the present session of 28 January to 21 February 2002 constitutes surprise encroaching upon the right of the Accused to be accorded a reasonable time to prepare his defense.

5. Additionally, the Defense maintains that the statements of witnesses GKI, GKL and GKJ talk about massacres, which occurred in April 1994 in the Catholic Parish of Gishaka. The Defense submits that neither the Indictment against the Accused nor the Prosecutor's Pre-trial Brief make mention of massacres that occurred in the Catholic Parish of Gishaka.

HAVING DELIBERATED

6. The Chamber notes that the Prosecutor brings her Motion pursuant to Rules 54 and 73 of the Rules. Rule 54 of the Rules, a general Rule, provides that "[a]t the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial." Rule 73 of the Rules provides *inter alia* that "[a]ny party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the Accused."

7. It is the Trial Chamber's opinion that the Prosecutor's Motion, brought pursuant to Rules 54 and 73 of the Rules, seeking an appropriate ruling on the addition of GKI, GKL and GKJ to her list of witnesses, is properly made thereunder.

8. The Chamber notes that the Prosecutor makes her request, pursuant to Rule 73bis(E) of the Rules, according to which, "[a]fter commencement of trial, the Prosecutor, if he considers it to be in the interest of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called".

9. In this regard, the Chamber recalls the jurisprudence of the Tribunal that, "[t]he final decision as to whether it is in the interests of justice to allow the Prosecution to vary its list of witnesses rests with the Chamber."¹ Whereupon the said Trial Chamber assessed the "interests of justice" and "good cause" before granting the addition of a witness as amounting to, "[t]he materiality of the testimony, the complexity of the case, prejudice to the Defense, including elements of surprise, on-going investigations, replacements and corroboration of evidence [...] the presentation of the best available evidence [...] balanced against the right of the accused to have adequate time and facilities to prepare his Defense and his right to be tried without undue delay."

10. In the instant case, it is noteworthy that the Prosecutor filed the unredacted statements of GKI, GKJ and GKL with the Registry on 7 January 2001, and the redacted statements in English and French on 5 December and 13 December 2001 respectively. Such disclosure is mandatory pursuant to Rule 66(A)(ii), which provides also that, "[u]pon good cause shown a Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the defense within a prescribed time."

11. The Chamber notes that the Prosecutor maintains that the testimony of GKI, GKJ and GKL is allegedly the best available evidence. In particular, the testimony of GKI supports *inter alia* the count of conspiracy to commit genocide whereby the witness will testify that

¹ *Prosecutor v. Nahimana, Ngeze, Barayagwiza*, ICTR-99-52-T in the "Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses," of 26 June 2001 (the "Media Trial")

the Accused allegedly attended the meeting of the 12 April 1994 at Gishaka Parish and it will be used to rebut the alibi of the Accused. Furthermore, the Prosecutor submits that the evidence of GKJ will corroborate the evidence of GKI because, like GKI, GKJ was present when the attack at Gishaka was taking place. The Prosecutor submits that the testimony of GKL is relevant because it will rebut the alibi of the Accused as the witness will contend that on 9 April 1994, s/he saw the Accused at a roadblock directing Tutsis to go to Gishaka Parish where the killings took place in the presence of the Accused.

12. The Chamber notes that the Defense objects to the Motion because the testimonies of GKI, GKJ and GKL make allegations as to the involvement of the Accused in crimes committed at Gishaka Parish while the Indictment and the Prosecutor's Pre-Trial Brief only refer to the involvement of the Accused in crimes committed at Gikomero.

13. The Chamber is of the opinion that, although events at Gishaka Parish were not directly referred to in the Indictment against the Accused, the said Indictment states that the Accused is alleged to have "[s]upervised the killings in the area [Kigali-Rural]" during the month of April 1994.² The Chamber notes that Gishaka Parish is in a Commune located in the Prefecture of Kigali-Rural and that similar mention of the activities of the Accused can be found in the Prosecutor's Pre-Trial Brief. Additionally, the Prosecutor points out that her opening statement sets out allegations with respect to the involvement of the Accused in events that occurred in Gishaka Parish.³ It is also noted that the Prosecutor filed exhibits identifying locations at the Gishaka Catholic Parish.

14. It is the Chamber's opinion that the Prosecutor has demonstrated good cause for adding GKI, GKJ and GKL to her list of witnesses and that such an addition will not prejudice the Defense nor will it unduly delay the proceedings. The Chamber therefore grants the Prosecutor's request to add GKI, GKJ and GKL to her list of witnesses.

15. Notwithstanding, since the Defense expressed surprise at the expected testimony concerning Gishaka Parish by the said witnesses, the Chamber considers it warranted that the Defense be given sufficient time to prepare for the cross-examination of the said three witnesses. Accordingly, the Chamber directs that the testimony of witnesses GKI, GKJ and GKL be heard at the next trial session scheduled in May 2002.

² See paragraphs 6.44 – 6.46 on Kigali-Rural found in the Indictment of 28 September 1999 against the Accused, which outline attacks against Tutsis in Kigali-Rural, with specific reference to the attack of 12 April 1994 at the Parish Church and school in Gikomero.

³ See Trial Transcript of 3 September 2001 in this case at page 17 - 19 where in her Opening Statement, the Prosecutor explains that she will adduce evidence with respect to two locations, namely, the Gikomero Protestant Parish and Gishaka Catholic Church.

FOR THE ABOVE REASONS, THE TRIBUNAL,

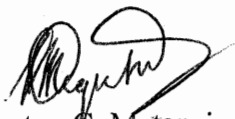
GRANTS the Prosecutor's Motion to add witnesses GKI, GKJ and GKL to her witness list.

DIRECTS that the testimony of witnesses GKI, GKJ and GKL be heard at the next trial session scheduled in May 2002.

Arusha, 6 February 2002



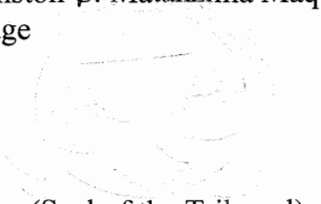
William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge



(Seal of the Tribunal)