

ICTR-99-54a-T
15-2-2002
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 15 February 2002

The PROSECUTOR v. Jean de Dieu KAMUHANDA

Case No. ICTR-99-54A-T

DECISION ON THE PROSECUTOR'S MOTION TO ADD
WITNESS DAL

Office of the Prosecutor

Marks Moore
Ifeoma Ojemeni
Ibukunolu Babajide
Dorothee Marotine

Defense Counsel for Kamuhanda

Aicha Condé
Grace Amakye

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JUDICIAL RECORDS/PROSECUTOR'S OFFICE
ICTR
KAMPALA

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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 Ramarosan, (the "Chamber");

BEING SEIZED of the "Prosecutor's Motion to Add Witness DAL," filed on 6 February 2002 (the "Motion");

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 13 February 2002, the Chamber now decides the Motion;

HAVING DELIBERATED

1. The Chamber notes that the Prosecutor brings her Motion pursuant to Rules 54 and 73 of the Rules. 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." Rule 54 of the Rules, 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."

2. The Trial Chamber finds that the Motion, brought pursuant to Rules 54 and 73 of the Rules, seeking an appropriate ruling on the addition of DAL to her list of witnesses, is properly made thereunder.

3. 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".

4. In this regard, the Chamber recalls that the Tribunal decided 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 The 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."²

5. According to the summary provided, while witness DAL, a Hutu, was passing bodies on the road during a convoy with Kamuhanda, he heard Kamuhanda say, "Those young men (the *Interahamwe*) have done a good job; they partially carried out some of the appeals made at the meeting I have just attended." Furthermore, during this convoy, DAL heard Kamuhanda addressing the *Interahamwe* at every roadblock saying, "We are almost there!

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*")

² *idem*

Do not cede to fatigue, the enemy is strong. Do not allow anyone through without checking their identification.” Furthermore, DAL will testify that Kamuhanda asked the militiamen whether they had enough arms.

6. The Chamber notes that the Prosecutor argues that the expected testimony of DAL is allegedly the best available evidence of the state of mind and attitude of the Accused about 10 days after the alleged killings. The Chamber further notes that the Prosecutor had intended to use the expected testimony of DAL to rebut the Defense’s alibi evidence.

7. In the instant case, the Prosecutor filed the unredacted statement of DAL with the Registry on 5 February 2002.

8. The Chamber notes that the Defense objects to the Motion because they allege that the testimony of DAL, who is from Kigali, is expected to be about events of 22 April 1994. The Defense argues that neither the Indictment against the Accused nor the Prosecutor’s Pre-Trial Brief mention the said date. In any case, the Defense argues that the expected testimony should be used to support the Count of Incitement, a Count not leveled against the Accused in the Indictment against him.

9. Nonetheless, it is the Chamber’s opinion that the Prosecutor has demonstrated good cause for adding DAL 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 DAL to her list of witnesses but notes that to ensure judicial economy, the modification of the list of witnesses should not be done in a piecemeal fashion.

10. Furthermore, since the Defense indicated, in the alternative, that if the Motion was granted, they would prefer the witness to be heard during the present ongoing session, the Chamber thus directs that arrangements be made to enable the hearing of the testimony of witness DAL during the present ongoing session, or alternatively, if not feasible, at the next trial session scheduled in May 2002.

FOR THE ABOVE REASONS, THE TRIBUNAL,

GRANTS the Prosecutor’s Motion to add witness DAL to her witness list.

DIRECTS that arrangements be made to enable the hearing of the testimony of witness DAL during the present ongoing session, or alternatively, if not feasible, at the next trial session scheduled in May 2002.

Arusha, 15 February 2002



William H. Sekule
Presiding Judge

Winston M. Manzima Maqutu
Judge



Arlette Ramarason
Judge