



1c12-99-46-T
11-6-2002
(3117-3115)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3117
2m
OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr Adama Dieng

Date: 11 June 2002

THE PROSECUTOR
v.
ANDRÉ NTAGERURA
EMMANUEL BAGAMBIKI
SAMUEL IMANISHIMWE

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Case No. ICTR-99-46-T

**DECISION ON DEFENCE OF NTAGERURA'S MOTION TO VARY ITS
WITNESS LIST PURSUANT TO RULE 73 TER (E)**

The Office of the Prosecutor:
Mr Richard Karegyesa
Ms Holo Makwaia
Ms Andra Mobberley

Counsel for the Accused:
Mr Benoît Henry
Mr Hamuli Rety
Mr Vincent Lurquin
Mr Seydou Doumbia
Ms Marie-Louise Mbida
Mr Pierre Fofe

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"), sitting as Trial Chamber III, composed of Judges Lloyd George Williams Q.C., presiding, Yakov Ostrovsky and Pavel Dolenc (the "Chamber");

BEING SEISED of "Defence Motion on Behalf of André Ntagerura for an Order pursuant to Article 20.4(e) of the Statute and Rules 73 *ter* (E) and 89 (C) of the Rules of Procedure and Evidence [Variation of the Witness list]" filed 31 May 2002 (the "Motion");

CONSIDERING the "Prosecutor's Response to the Defence Motion for an Order Varying the Witness List Pursuant to Article 20.4(e) of the Statute and Rules 73 *ter* (E) and 89 (C) of the Rules of Procedure and Evidence" dated 4 May 2002 and filed 4 June 2002;

CONSIDERING the "Defence Response to the Prosecutor's Response Filed 4th May 2002 in the Matter of the Variation of the Witness List of André Ntagerura, Pursuant to Article 20.4(e) of the Statute and Rules 73 *ter* (E) and 89 (C) of the Rules of Procedure and Evidence" filed 7 June 2002;

NOW CONSIDERS the matter solely on the basis of the briefs of the parties, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (Rules).

Defence Submissions

1. The Defence of Ntagerura seeks to substitute an expert witness for one originally included in its witness list filed 14 January 2002. At the request of the Chamber, the Defence has withdrawn a number of other witnesses who were originally included in its witness list.
2. The Defence now contends that as a result of its efforts to reduce the number of witnesses it will call, and the failure of the Prosecutor to admit certain facts, this substitution is necessary to adequately rebut Prosecution evidence and to avoid prejudice to the Accused.
3. The proposed witness, Wayne Madsen, would be substituted for another expert witness listed at number 44 of the Defence list. His testimony would be given during the deleted witness's time frame, and thus, would not delay the proceedings.

Prosecutor's Response

4. The Prosecutor submits that the Defence has failed to demonstrate how the interests of justice would be served by varying the Defence witness list at this stage of the proceedings. The Prosecutor is concerned that the proceedings might be delayed since the reports of the Defence expert witnesses have not yet been disclosed pursuant to Rule 94 *bis* (B)(iii).
5. The Prosecutor argues that the Defence cannot rely on its removal of certain factual witnesses as a reason to call a new expert witness. As the Defence has failed to provide any indication of the substance of the proposed witness's testimony, its relevance cannot be determined.



6. The Prosecutor also notes that the Defence has not expressly sought leave to remove Antoine Nyagahene from its list and that his removal after submitting his expert report would waste judicial resources.

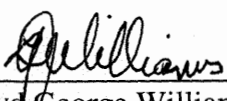
Defence Response

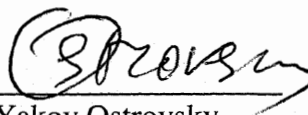
7. The Defence responds that the substitution of Mr. Masden would expedite the proceedings because he has already prepared an English report that is in the possession of the Defence. The Defence explains that Mr. Nyagahene cannot present his report within the time frame prescribed by the Chamber. The Defence confirms that the other reports of their expert witnesses will be filed according to schedule.

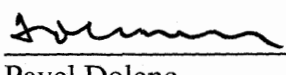
Deliberations

8. After commencement of the Defence case, Rule 73 *ter* (E) permits the Defence, if it considers it to be in the interests of justice, to file a motion seeking leave to vary its decision as to which witnesses are to be called.
9. The Motion does not explicitly request removal of Antoine Nyagahene, who is listed as witness 44. However, the Chamber understands the word "substitute" to mean "in place of", that is, that the addition of expert witness Wayne Madsen would be linked to the deletion of expert witness 44.
10. The modification of the witness list is a matter for which the Chamber should adopt a flexible approach in the exercise of its discretion. The Defence has indicated that the evidence that the proposed expert witness is expected to give will be important to its case. Moreover, the Defence maintains that the witness will be available to testify within the time frame originally scheduled for expert witness 44. In addition, the Defence, with leave of the Chamber, has removed a number of witnesses from its original witness list, resulting in a considerable saving of judicial time. Taking all the circumstances into consideration, the Chamber is prepared to allow the Defence to vary its list of witnesses by substituting Wayne Madsen for the witness listed as number 44 on its original witness list, Antoine Nyagahene.
11. The Chamber reminds the Defence of its obligations, pursuant to Rule 94 *bis* (A), to disclose the full statement of its proposed expert witness to the Prosecutor as early as possible and to file this statement with the Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.
12. The Chamber therefore grants the Defence leave to vary its witness list by adding witness Wayne Madsen and by deleting witness Antoine Nyagahene.

Arusha, 11 June 2002.


Lloyd George Williams, Q.C.
Judge, Presiding


Yakov Ostrovsky
Judge


Pavel Dolenc
Judge

(Seal of the Tribunal)

