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ICTR-99-52-7
25-02-2003
(31733 - 31729)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
P.O. Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie

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S. MUSA

TRIAL CHAMBER I

Original : English

Before: Judge Navanethem Pillay, Presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registry: Mr. Adama Dieng

Date: 25 February 2003

**THE PROSECUTOR
V.
FERDINAND NAHIMANA
JEAN-BOSCO BARAYAGWIZA
HASSAN NGEZE**

JUDICIAL RECORDS/ARCHIVES
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2003 FEB 25 | P. 5: 23 |
Adama Dieng

Case No. ICTR-99-52-T

**DECISION TO RECONSIDER THE TRIAL CHAMBER'S DECISION OF 24
JANUARY 2003 ON THE DEFENCE EXPERT WITNESSES**

The Office of the Prosecutor:

Mr. Stephen Rapp
Ms. Simone Monasebian
Ms. Charity Kagwi
Mr. William Egbe

Counsel for Hassan Ngeze:

Mr. John Floyd III
Mr. Rene Martel

Counsel for Jean-Bosco Barayagwiza:

Mr. Giacomo Barletta-Caldarera
Mr. Alfred Pognon

Counsel for Ferdinand Nahimana:

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis QC

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),
SITTING as Trial Chamber I composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana;

BEING SEIZED of a Defence motion to allow Ngeze’s Expert Witnesses’ Report and Testimony filed, on 11 February 2003, requesting a reconsideration of the Trial Chamber’s decision of 24 January 2003 on the Defence Expert Witnesses;

CONSIDERING the Chamber’s “Decision on the Expert Witnesses for the Defence” made on 24 January 2003;

CONSIDERING the status conference held on 30 January 2003 at which the Defence for Ferdinand Nahimana, Hassan Ngeze and Jean Bosco-Barayagwiza applied for reconsideration of the above-mentioned decision;

CONSIDERING the Curriculum Vitae and report furnished in respect of Expert Witness Dr. Roger Shuy filed on 30 January and a document containing his most recent Curriculum Vitae filed on 31 January 2003;

CONSIDERING the Curriculum Vitae of Mr. John Adams and Professor Edwin Baker filed on 31 January 2003;

CONSIDERING the Report of Professor Edwin Baker filed on 7 February 2003 and his re-disclosed Curriculum Vitae filed on 11 February 2003;

CONSIDERING the Reports and Curriculum Vitae of Prof. Goffoul and Dr. Jiri Toman, filed on 10 February 2003 on behalf of Jean Bosco Barayagwiza;

CONSIDERING the Prosecution’s written responses to the proposed testimony of Dr. Roger Shuy and Professor Edwin Baker filed on 7 February 2003 and 18 February 2003 respectively, in which the Prosecution opposes the calling of both witnesses;

CONSIDERING the Curriculum Vitae of Dr. Helmut Strizek and that of Mr. Barrie Collins filed by the Defence for Ferdinand Nahimana on 6 February 2003;

CONSIDERING Rules 94bis of the Rules concerning Testimony of Expert Witnesses;

HEREBY DECIDES the motion upon written briefs of the parties.

SUBMISSIONS BY THE PARTIES

The Defence for Hassan Ngeze has now filed the Curriculum Vitae and Reports of Professor Edwin Baker and Dr. Roger Shuy. The Defence submits that both Experts have published numerous books and are internationally recognized in their fields of Press Freedom and Socio-Linguistics respectively. Dr. Shuy has evaluated the testimony of the Prosecution’s Socio-Linguist Expert, Dr. Mathias Ruzindana, and he has conducted his own research. Furthermore, Dr. Shuy will testify about the science of the Prosecution Expert Witnesses while Professor Baker will testify on aspects of Freedom of Speech.

On behalf of the Defence for Ferdinand Nahimana, during the status conference, Counsel Ellis argued that the Defence seeks to counter the Prosecution case, which was a “one-sided



interpretation of the role of the various political parties.” The Defence submits that, through Dr. Strizek, it seeks to put before the Trial Chamber evidence on the negotiations which led to the Arusha Peace Accords and an analysis of their content. Dr. Strizek will dispute the relevant portions of Dr. Alison Des Forge’s evidence. Concerning the documents, the Defence submits that this is a very central matter to this case because a conspiracy is a plan to commit genocide yet the Prosecutor relies on Dr. Des Forges as an Expert to produce documents and show that a plan existed. The Defence asserts that there is no evidence that supports the Prosecution contention of a plan, and that the evidence relied upon by Dr. Des Forges in fact can be, and should be, viewed in an entirely contrary manner. Dr. Strizek is the only witness that can testify to this fact. Additionally, even if the Chamber does not have to decide who shot down the plane, if a plan existed, then the people who formulated the plan would be expected to provide the catalyst and that is the way in which Dr. Strizek uses the hypothesis. He will present another hypothesis and is speaking to the documents relied upon by the Prosecutor.

The Defence will also use Dr. Strizek to give an independent contrary view of Ferdinand Nahimana’s writings. Furthermore, Dr. Strizek lived in Rwanda in the late '80s, worked there, knows the country and subsequently visited the country. He will therefore be in a position to support the defence contention that Rwanda was not ethnically divided in the years prior to the RPF attack. He is also able to give evidence about the political and historical events of the period.

The Defence for Jean Bosco-Barayagwiza complained that the Chamber was applying double standards and biased against the Defence expert witnesses when the Chamber challenges their status. The Defence Expert witnesses are screened, in advance, whereas those of the Prosecution were not given the same treatment. Toman was refused in advance before he even appeared and before the Tribunal could determine whether he is good or not.

Submission by the Prosecution

The Prosecution argues, inter alia, that based upon Dr. Shuy’s Curriculum Vitae filed on 30 January 2003, it is now clear that Dr. Shuy claims no expertise or study of Kinyarwanda and his report also reveals that he is not familiar with the context of Rwanda, 1990-1994. The Prosecution also submits that Dr. Shuy’s own lack of knowledge of Rwanda or its language demonstrates the impossibility of finding someone who combines ideal general sociolinguistic and specific Kinyarwanda qualifications. The Prosecution contends that matters to be testified upon by Dr. Shuy were covered by the Defence in cross-examination of Dr. Ruzindana.

The Prosecution submits that the Report of Professor Baker “cannot be seen to be anything other than a law review article covering: a) the general importance of freedom of the press; b) U.S. legal standards of freedom of the press; c) Nuremberg law; d) European Court of Human Rights law; and, e) a review of the ICTR’s law.” The Prosecution submits that such matters cannot in any way be considered expert testimony, and are to be argued in closing arguments.

During the status conference, the Prosecution submitted, inter alia, that the Trial Chamber, in its recent decision, made its own determination in regard to Dr. Strizek, to which the Prosecution adheres. The submission made by Ms. Ellis is “a preview of closing arguments in this case,” which are yet to come. The Defence’s summary of Dr. Strizek indicates that he will insist on the fact that there existed a planning of the genocide and is based on the hypothesis that the President’s plane was shot down by RPF. Indeed, the position of the Prosecution is that there was a plan. According to the Prosecution, the idea of litigating the issue of the plane crash is irrelevant to the role of the RTLM during the events in Rwanda.

The Prosecution states that "the issue of the plane crash is irrelevant to the question of propaganda that came before and after in which the Tutsis were dehumanised." Prosecution adds that "it can be the RPF, it can be the Hutu extremists, and it makes no difference to the proof that we are putting on."

On Professor Baker's anticipated testimony, the Prosecution argued that it pivots upon a legal issue, namely "what standard this Court adopts in the context of the laws of various nations and the relevant international covenants." Therefore, to have an Expert on that legal issue, an American one in particular, is not something that is helpful to the Chamber and moreover, the Chamber has been repeatedly reminding Mr. Floyd about this fact. Therefore, there is no need for an Expert on the law.

In respect of Professor Toman, his summary indicates that he was responding to why Mr. Barayagwiza did not want to participate in the Trial and how unfair it was that the Appeals Chamber reviewed that initial decision. This is clearly not an appropriate subject for determination by this Trial Chamber or re-determination by this Trial Chamber.

DELIBERATIONS

The Chamber has reviewed the matter and now has the Curriculum Vitae and the Reports of Dr. Roger Shuy and Professor Edwin Baker on behalf of Hassan Ngeze; the Curriculum Vitae and the Reports of Dr. Goffoul and Dr. Jiri Toman, on behalf of Jean Bosco-Barayagwiza.

With respect to the Ngeze Expert witnesses, the Chamber has reviewed the Reports which have been disclosed subsequent to its decision and is satisfied that Dr. Shuy has sufficient relevant expertise. On the basis of the new Report, it is clear he has conducted independent research to enable him to testify generally and in relation to Dr. Ruzindana's testimony. However, the Report submitted by Professor Baker does not lead to a similar conclusion. The Chamber is not persuaded to change its earlier assessment that Professor Baker's testimony covers law-related issues for interpretation by the Chamber and that should appropriately be addressed in Counsel's Closing Brief.

Concerning Experts for Ferdinand Nahimana, namely Dr. Helmut Strizek and Mr. Barrie Collins, the Chamber is of the view that no additional information has been furnished to persuade it to reconsider its decision and yet all Defence Counsel were reminded by the presiding Judge, at the status conference, to furnish all the material available by 7 February 2003 in order to boost up their cases. The Chamber reiterates its earlier decision for the reasons stated therein.

With regard to the request to restore Dr. Jiri Toman to testify for Jean Bosco Barayagwiza, the Chamber finds that no new information has been furnished by the Defence Counsel to persuade it to reconsider its decision.

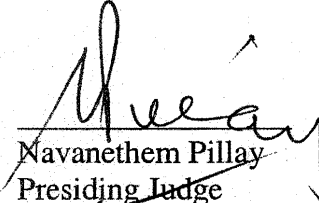



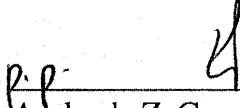
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FOR THE ABOVE REASONS, THE TRIBUNAL VARIES ITS DECISION OF 24 JANUARY 2003 AS FOLLOWS:

1. **ADDS** Dr. Roger Shuy, a Socio-Linguist and Mr. John E. Adams, a Forensic Pathologist to the list of witnesses for Hassan Ngeze, pursuant to Rule 73*ter*(E) of the Rules.
2. **MAINTAINS** its Order of 24 January 2003 in all other respects.

Arusha, 25 February 2003.


Navanethem Pillay
Presiding Judge

 p.p. Erik Mose
Judge
 p.p. Asoka de Z. Gunawardana
Judge



Seal of the Tribunal