



ICTR-99-52-T
10-04-2003
(32090-32088)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

32090

S. Mussa

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 10 April 2003

THE PROSECUTOR

v.

HASSAN NGEZE

Case No. ICTR-99-52-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2003 APR 10 | P 3:48 |

**DECISION ON THE SECOND MOTION TO RECONSIDER THE SCHEDULING
ORDER DATED 26 MARCH 2003 ON THE TESTIMONY OF ROGER SHUY**

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

32089

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 (“the Chamber”);

BEING SEIZED of:

1. The “Second Motion to Reconsider the Scheduling Order dated 26 March 2003 on the Testimony of Roger Shuy”, filed on 1 April 2003 (“the motion”);
2. The “Prosecutor’s Response to the Ngeze Defence’s Second Motion to Reconsider the Scheduling Order dated 26 March 2003 on the Testimony of Roger Shuy”, filed on 2 April 2003; and
3. The “Ngeze Defence’s Reply to the Prosecutor’s Response”, filed on 3 April 2003;

RECALLING the Chamber’s “Scheduling Order” dated 26 March 2003 (“the Scheduling Order”), wherein the Chamber scheduled Dr. Roger Shuy’s testimony for 29 and 30 April 2003;

CONSIDERING the relevant provisions of the Statute of the Tribunal (“the Statute”), in particular, Articles 19 and 20, and the Rules of Procedure and Evidence (“the Rules”), in particular Rule 71;

HEREBY DECIDES the motion pursuant to Rule 73(A) of the Rules, that is, solely on the basis of the briefs filed by the parties.

SUBMISSIONS OF THE PARTIES

1. The Defence for Hassan Ngeze (“the Ngeze Defence”) seeks a reconsideration of the Scheduling Order in so far as it relates to Dr. Roger Shuy’s testimony, on the basis that it violates the Accused’s right to a fair trial. Dr. Shuy’s testimony relates to the evidence given by Prosecution Witness Dr. Ruzindana. The Ngeze Defence asserts that Dr. Shuy has professional engagements and will not be able to testify in Arusha on 29 and 30 April 2003 as scheduled. Consequently, it seeks to have Dr. Roger Shuy called to testify between 19 May and 19 June 2003, when Dr. Shuy will be available to travel to Arusha, as communicated via an email to the Ngeze Defence dated 19 March 2003. Alternatively, it seeks to have his testimony taken by deposition. The Ngeze Defence has informed the Chamber that Dr. Shuy will be available to travel from his engagement in Europe to The Hague on 28 and 29 April 2003. Alternatively, the Ngeze Defence seeks to have Dr. Shuy’s report admitted into evidence.
2. The Prosecution opposes the motion and seeks an order directing WVSS-D to contact Dr. Shuy to verify his availability to testify. It submits that the Ngeze Defence has failed to show “exceptional circumstances” and asserts its right to cross-examine Dr. Shuy.

DELIBERATIONS OF THE CHAMBER

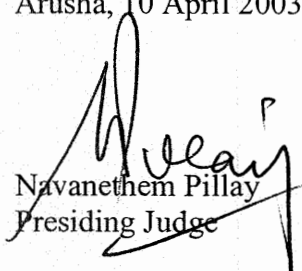
3. Article 19(1) guarantees the Accused’s right to a fair and expeditious trial, and Article 20(4)(e) the right to have witnesses called on the Accused’s behalf.

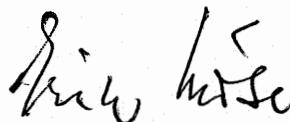
4. The Chamber notes that all Defence Counsel were put on notice during the 7 December 2002 Status Conference that they should have been prepared and ready with their cases when the Prosecution closed its case. The Scheduling Order provides for the close of the Ngeze Defence case on 9 May 2003, subject only to the possibility of hearing ten factual witnesses whose summaries had to be filed by 4 April 2003. The Chamber notes that this was not done. The Ngeze Defence have been dilatory in securing the attendance of Dr. Shuy as a witness for the Ngeze defence. Consequently, the Chamber declines to reconsider the Scheduling Order to accommodate Dr. Shuy's timetable, which should have been ascertained by the Ngeze Defence in a timely manner.
5. However, the Chamber considers that it would be in the interests of justice for the Accused Ngeze to have Dr. Shuy called for the purpose of rebutting Prosecution Witness Dr. Ruzindana's testimony. The Chamber notes that Dr. Shuy is unavailable due to professional engagements, and considers that exceptional circumstances exist to hear Dr. Shuy by deposition.


FOR THE ABOVE REASONS, THE TRIBUNAL

- a) **DENIES** the motion to reconsider the Scheduling Order;
- b) **GRANTS** the alternative motion to hear Dr. Shuy by deposition and **ORDERS** that the testimony of Dr. Shuy be taken by deposition at the seat of the Appeals Chamber of the Tribunal at The Hague on 28 and 29 April 2003;
- c) **APPOINTS** as Presiding Officer for that purpose Judge Erik Møse;
- d) **ADVISES** that a Scheduling Order will be issued by the Presiding Officer before the commencement of the deposition;
- e) **DIRECTS** the Registry to make the necessary arrangements to enable the evidence of Dr. Shuy to be taken by deposition in The Hague;
- f) **DENIES** the alternative motion to have Dr. Shuy's expert report admitted into evidence in the absence of his testimony.

Arusha, 10 April 2003


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

[Seal of the Tribunal]

