

ICTR-99-54A-T
15.4.2003
(1162 — 1160)

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United Nations
Nations Unies

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 April 2003

The PROSECUTOR

v.

Jean de Dieu KAMUHANDA

Case No. ICTR-95-54A-T

2003 APR 15 P 5:20
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**DECISION ON KAMUHANDA'S EXTREMELY URGENT MOTION FOR
LEAVE TO VARY THE LIST OF DEFENCE WITNESSES (RULE 73 *ter*)**

Prosecution

Mr. Marks Moore
Mr. Ibukunolo Alao Babajide
Ms. Dorothee Marotine

Defence

Ms. Aïcha Condé
Ms. Patricia Mongo
Ms. Anta Guisse
Ms. Seynabou Benga

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

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

BEING SEIZED of:

- (i) The Defence "Extremely Urgent Motion for Leave to Vary the List of Defence Witnesses – Rule 73 *ter* of the Rules of Procedure and Evidence" filed on 20 March 2003 (the "Motion");

NOTING that the Prosecution filed its Response out of time;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), particularly Rule 73 *ter* (E), which states that:

After commencement of the defence case, the defence, if it considers it to be in the interests 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.

NOW CONSIDERS the matter solely on the basis of the written briefs of the Parties, pursuant to Rule 73(A) of the Rules.

PRELIMINARY MATTER

1. The Prosecution was notified on 25 March 2003 that they had five days to respond to the Defence Motion. It filed a Response on 11 April 2003. In its Response, no attempt is made to give reason for the late filing. The Prosecution Response arrived out of time and will not be considered. The Defence have indicated by letter that they do not intend to file any further Reply¹.
2. This Chamber finds such disregard for its instructions unacceptable, and requires greater diligence from the Prosecution with regard to the timeous filing of written submissions.

SUBMISSIONS OF THE PARTIES

3. The Defence makes an application, pursuant to Rule 73 *ter* of the Rules, in order to vary the list of witnesses to be called before the Chamber. The Defence wishes to add an additional witness to the existing list to be called during the forthcoming trial session.
4. The Defence informs the Chamber that Witness RGG is a witness whose testimony is of vital importance to the Defence. According to the Defence, Witness RGG was a *gendarme* who was based in Kigali in April 1994, and who took part in the fighting

¹ Letter of 14 April 2003, filed on the same date.



which occurred there. Accordingly, Witness RGG is able to testify, from the perspective of someone involved in the fighting, on the situation as regards the roads from Kigali to Gikomero around the 12 April 1994.

5. The Defence explains that it has (only now) found a witness with the qualifications of Witness RGG who is able to testify before the Chamber. The Defence has indicated that it has disclosed the identity of this potential witness to the Prosecution on 17 March 2003, giving the Prosecution sufficient time to prepare its cross-examination should the Chamber grant this Motion. It submits that the Prosecution will sustain no prejudice by the granting of this Motion.
6. The Defence submits a summary of the areas on which Witness RGG would testify, covering the positions occupied by the different belligerents in the city of Kigali, and the effect of the fighting on the possibility of using the road from Kigali to Gikomero.

DELIBERATIONS

7. The Chamber has considered the reasons given by the Defence for the filing of this request at a late stage, the importance that they attach to this witness's testimony, and the fact that the Prosecution has taken no position on the matter. The Chamber finds that the Prosecution has sufficient time to complete its preparation for this witness prior to his expected date of testimony, and that no prejudice would be caused by the granting of this Motion. Accordingly, the Chamber grants the Defence request to add Witness RGG to the list of witness to give testimony in the forthcoming session.

FOR THE ABOVE REASONS, THE TRIBUNAL

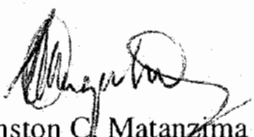
GRANTS the Defence Motion and:

ORDERS that the list of Defence Witnesses be amended by adding Witness RGG.

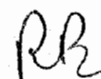
Arusha, 15 April 2003



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

