



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
15-06-2004
(20622-20620)

20622
S. Mulla

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 15 June 2004

THE PROSECUTOR

v.

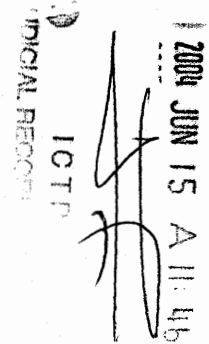
Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T



**DECISION ON DEFENCE MOTION TO COMPEL THE PROSECUTION TO FILE
A REVISED WITNESS LIST**

The Office of the Prosecutor

Barbara Mulvaney
Drew White
Segun Jegede
Fatou Bensouda
Christine Graham
Rashid Rashid

Counsel for the Defence

Raphaël Constant
Paul Skolnik
Jean Yaovi Degli
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

Ch

20621

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED of the “Motion to Compel the Prosecutor to Immediately Comply with the Chamber’s Decision on 21 May 2004 Ordering the Prosecution to File its Final List of All its Witnesses”, etc., filed by the Defence for Ntabakuze on 1 June 2004;

CONSIDERING the “Addendum”, filed by the Defence for Ntabakuze on 8 June 2004 and the Prosecution “Response”, filed on 11 June 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 8 April 2003, Trial Chamber III, which was previously seized of this trial, issued an order requiring the Prosecution to file a revised and final list of the witnesses it intends to call in this case, not to exceed one hundred names.¹ That Chamber found that “pursuant to Rule 73bis (D) ... the Prosecutor is seeking to call an excessive number of witnesses to prove the same facts”. In response to the Order, the Prosecution submitted a revised witness list on 30 April 2003, containing 121 names, excluding two witnesses who had already testified. On 1 March 2004, being seized of a Prosecution motion for reconsideration of the 30 April order, and a Defence motion for contempt for violation of the order, Trial Chamber I issued an order requiring the Prosecution to file a list “of all its witnesses, not to exceed one hundred in number, not later than 12 March 2004”.² On 12 March 2004, the Prosecution filed an eight-page document which, in addition to listing one hundred “witnesses”, also listed seven “92bis witnesses”. The Defence filed a motion requesting an order requiring the Prosecution to comply with the 1 March order, and on 21 May 2004, the Chamber rendered a decision finding the Prosecution to be in “obvious” non-compliance, and again ordering the Prosecution to file “a list of all its witnesses, not to exceed one hundred in number, by 28 May 2004”.³ On 28 May 2004, the Prosecution filed a five page document which includes a list of one hundred witnesses whom it intends to call.

SUBMISSIONS

2. The Defence complains that the list filed by the Prosecution on 28 May 2004 is not in compliance with the Chamber’s order of 21 May for three reasons. First, the filing of 28 May includes lists of “Removed” and “Deceased” witnesses, which is not in conformity with the Chamber’s order; second, the Prosecution appears to reserve the right to replace four of the names listed among its one hundred witnesses; and third, the Defence notes that one witness whom the Prosecution has indicated that it wishes to call during the present trial session does not appear on the Prosecution’s list of witnesses, but appears instead on the Prosecution’s list of “removed” witnesses.

3. The Prosecution responds that filing lists of “removed” and “deceased” witnesses along with its list of one hundred witnesses does not violate the Chamber’s order of 21 May

¹ Order for Reduction of Prosecutor’s Witness List (TC), 8 April 2003.

² Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004.

³ Decision on Motion to Compel the Prosecution to Comply with the Chamber’s Decision of 1 March 2004 (TC), 21 May 2004.

7h

and is administratively convenient. It does not respond directly to the arguments concerning the conditional nature of four of the witnesses, or the absence of a witness whom the Prosecution wishes to call imminently, as communicated in an email from the Prosecution indicating the sequence of its witness during the ongoing trial session.

DELIBERATIONS

4. The Prosecution has not violated the Chamber's order of 21 May by filing lists in addition to the one hundred witnesses whom it intends to call. Those lists have no bearing on Prosecution's obligation to list the one hundred witnesses whom it intends to call.

5. Four of the witnesses amongst the Prosecution's list of one hundred are marked as "(subject)", which the Prosecution explains to mean that they are "the subject of a further Motion to reconsider the exclusion of those witnesses from testimony. If such Motion is unsuccessful the place of the 'subject' witnesses may be taken by other witnesses". The Prosecution is perfectly entitled to list these four witnesses amongst the one hundred, as witnesses whom it intends to call. The purpose of the witness list is simply to indicate the entire range of witnesses whom the Prosecution wishes to call. Whether those four witnesses are allowed to testify is a matter for the Chamber to determine, based on the motion filed by the Prosecution pursuant to Rule 73bis (E). The Prosecution is not permitted, however, to reserve the right to nominate additional witnesses should those four witnesses be rejected. The Chamber recalls the language in the very first order concerning the reduction of the witness list, issued by Trial Chamber III on 8 April 2003: "After the filing of this revised list the Prosecutor may, in accordance with the normal procedure, apply pursuant to Rule 73bis (E) to vary her decision as to which witness are to be called".⁴

6. The Prosecution has named Witness BT in various emails to the parties and the Chamber as a witness whom it intends to call during the ongoing trial session. That witness does not appear amongst the one hundred witnesses. The Chamber further observes that three of the 92bis witnesses – Witnesses CHUDY, GU and QA – are not listed amongst its one hundred witnesses. The Chamber assumes that these are simply administrative errors, and not a deliberate attempt to circumvent the Chamber's order of 21 May.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion in part;

ORDERS the Prosecution to comply with the Chambers' orders of 8 April 2003, 1 March 2004, and 21 May 2004 by filing a list of all its witnesses, not to exceed one hundred in number, by 17 June 2004.

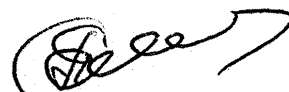
Arusha, 15 June 2004



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁴ Order for Reduction of Prosecutor's Witness List (T.C. 8 April 2003, para. 9.