

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
02-11-2004
(22972-22970)

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TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 2 November 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

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DECISION ON THE JOINT DEFENCE MOTION FOR AN UPDATE OF THE
PROSECUTION'S PRE-TRIAL BRIEF

The Office of the Prosecutor

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Ch

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 "Joint Defence Motion for an Update of the Pre-Trial Brief Revision Pursuant to the Trial Chamber Decision of May 2002", filed on 24 September 2004;

CONSIDERING the Prosecution's response, filed on 1 October 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 23 May 2002, the Chamber ordered the Prosecution to amend its Pre-trial Brief to identify the points in the Indictments to which each of its witnesses would testify.¹ The Prosecution filed its revised brief on 7 June 2002. The Chamber later granted two Prosecution requests to vary the list of witnesses, adding witnesses including Witness AAA, ABQ, AFJ, Nkole, Nowrojee, XBG, XBH, and XBM.

SUBMISSIONS

2. The Defence requests the Prosecution to update its Pre-trial Brief by specifying the points in the Indictment to which Witness AAA, ABQ, AFJ, Nkole, Nowrojee, XBG, XBH, and XBM have testified. According to the Defence, the Chamber's decision of 23 May 2002 applies to the added witnesses. By failing to specify which points in the Indictment the added witnesses are addressing, the Prosecution is depriving the Accused of his right to be informed of the nature and cause of the charges against them under Article 20 (4)(a). The motion also argues that amending the Pre-trial Brief will promote judicial economy by narrowing the scope of evidence, in a way that is necessary for the Defence, if it should file motions for acquittal at the close of the Prosecution's case.

3. The Prosecution argues that it has complied with the Chamber's prior order with respect to the added witnesses in its requests to vary the prosecution witness list. Secondly, the motion is moot because the Defence failed to raise this matter prior to cross-examining the witnesses at issue. The Prosecution further observes that the Defence does not need a revised Pre-trial Brief to file its motions for acquittal as it will have heard the evidence of the added witnesses and knows the factual charges in the Indictments.

DELIBERATIONS

4. Under Rule 73 *bis* (B)(iv)(c), the Chamber may order the Prosecutor to identify "the points in the indictment on which each witness will testify". In its decision of 23 May 2002, the Chamber objected to the fact that the Prosecution's Pre-trial Brief merely referred to the counts of the Indictments, which did not give sufficient notice to the Accused of the content of the witness's testimony. The Chamber directed the Prosecution to indicate to which "events, circumstances, or paragraphs" in the Indictments the witnesses would be testifying.²

5. In its motions to vary the witness list, the Prosecution has sufficiently detailed the content of the testimony in compliance with the requirements of Rule 73 *bis* and the

¹ *Bagosora et al.*, Decision on Defence Motions of Nsengiyumva, Kabiligi and Ntabakuze Challenging the Prosecutors Pre-Trial Brief and on the Prosecutor's Counter-Motion (TC), 23 May 2002.

² *Id.*, in particular para. 12.

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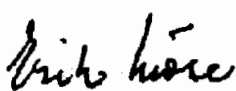
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Chamber's previous order.³ The Chamber also observes that the purpose of the Pre-trial Brief is to notify the Accused and their Counsel of the nature of the testimony witnesses will give so that they can prepare for the examination. With regard to evidence that was actually presented, the closing brief will serve the purpose for which the Defence seeks the update. The Rules provide for this type of summation at the close of all the evidence, not the close of the Prosecution's case. It would not promote the interests of judicial economy to require the Prosecution to amend the Pre-trial Brief at this late date.

FOR THE ABOVE REASONS, THE CHAMBER

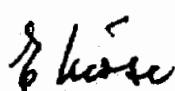
DENIES the joint Defence motion.

Arusha, 2 November 2004



Erik Møse
Presiding Judge

PP



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



³ Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) of the Rules of Procedure and Evidence 13 June 2003, paras. 7-10; Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) of the Rules of Procedure and Evidence 24 March 2004, paras. 8-55.