



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T

13-5-2005
(19784 — 19781)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 13 May 2005

The PROSECUTOR
v.
Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

JUDICIAL RECORDS ARCHIVES
ICTR

2005 MAY 13 A 11:30

**DECISION ON SAGAHUTU'S MOTION FOR EXCLUSION OF WITNESSES LMC,
DX, BB, GS, CJ, GFO**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Alphonse Van
Ms Ifeoma Ojemeni Okali
Mr Segun Jegede
Mr. Moussa Sefon
Mr Abubacarr Tambadou
Ms Faria Rekkas (Case Manager)
Ms Anne Pauline Bodley (Case Manager)

Counsel for the Defence:

Mr Gilles St. Laurent and Mr Ronnie Mac Donald for **Augustin Bizimungu**
Mr Christopher Black and Ms Tiphaine Dickson for **Augustin Ndindiliyimana**
Ms Danielle Girard for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

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

SITTING as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

BEING SEISED OF Sagahutu’s *Requête en Exclusion des Témoins LMC, DX, BB, GS, CJ, GFO*, filed on 25 April 2005 (the “Motion”);

HAVING RECEIVED AND CONSIDERED the

- (i) *Réponse du Procureur a la requête de la Défense d’Innocent Sagahutu en Exclusion des Témoins LMC, DX, BB, GS, CJ, GFO*, filed on 28 April 2005 (the “Response”);
- (ii) *Réplique a la Réponse du Procureur a la requête en Exclusion des Témoins LMC, DX, BB, GS, CJ, GFO*, filed on 5 May 2005 (the “Reply”);

CONSIDERING the joint Indictment against Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu as amended on 23 August 2004 (the “Amended Indictment”);

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”) in particular Rule 89(C) of the Rules;

HEREBY DECIDES the Motion on the basis of written briefs filed by the Parties pursuant to Rule 73 of the Rules.

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence for Sagahutu requests the Trial Chamber to order the Prosecution to exclude witnesses LMC, DX, BB, GS, CJ and GFO from its witness list.
2. The Defence submits that by decision rendered on 20 August 2004, the Chamber ordered the severance of the co-Accused Major Protais Mpiranya from the proceedings and ordered the Prosecution to adjust its witness list accordingly, that is, to exclude witnesses that dealt with Major Mpiranya only.
3. The Defence argues that based on the summaries of the statements of witnesses LMC, DX, BB, GS, CJ and GFO, it is clear that they concern only Major Mpiranya and that therefore the witnesses in question should be excluded from testifying.
4. The Defence submits that the exclusion of the afore-mentioned witnesses would both respect the decision rendered on 20 August 2004, as well as guarantee the right of the Accused to be tried without undue delay, by avoiding needless testimonies that may prolong the trial.

The Prosecution

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5. In his Response, the Prosecutor argues that it would be premature to exclude witnesses that have not yet testified.
6. The Prosecution submits that the exclusion of witnesses cannot be done based on the summaries of their respective statements, but only after they have testified in court and in the light of the examination-in-chief and the cross-examination. The Prosecution further submits that the summaries of witness statements cannot be considered as “testimony” in the sense of Rule 90 of the Rules.
7. The Prosecution argues that formerly co-Accused Protais Mpiranya is still included in the amended indictment as a participant in a joint criminal enterprise and as a co-conspirator to commit genocide. The Prosecution submits that the witnesses in question will testify to the count of conspiracy to commit genocide with which the Accused persons, together with Protais Mpiranya, are charged according to paragraph 22 of the amended indictment.
8. Furthermore, the Prosecution argues that the amended indictment mentions criminal activity of the former Rwandan Armed Forces in general, including the crimes committed by the presidential guard. According to paragraph 3 of the amended indictment, the presidential guard was, as any soldier, under the control of then Chief of Staff Augustin Bizimungu.
9. Finally, the Prosecution submits that witnesses LMC, DX, BB, GS, CJ and GFO will not exclusively testify against the accused Protais Mpiranya. In their statements to the investigators of the OTP, the witnesses in question gave not only information about crimes committed by the presidential guard under the command of Protais Mpiranya, but also about crimes committed by other battalions and other soldiers or about crimes committed by members of the presidential guard together with other soldiers.
10. For the above reasons, the Prosecutor asks the Chamber to reject the Defence Motion.

The Defence Reply

11. In its reply, the Defence argues that the Motion was not filed prematurely, rather it was filed on time and according to the criteria set out in the case of *Prosecutor v. Casimir Bizimungu*. The Defence refers to paragraph 17 of the Decision of 23 January 2004, where it reads: “Furthermore, the Trial Chamber is of the view that an objection [to the testimony of witnesses] ... should have been raised as soon as possible, at the minimum before the commencement of the evidence of the disputed witnesses”.¹ The Defence argues that this decision gained authority since the Prosecution’s appeal to it was dismissed.
12. The Defence further refers to a Decision in the case of *Prosecutor v. Kamuhanda*. In its decision on the Defence Motion for Severance and Separate Trial of 7 November 2000, the Trial Chamber stated that “the purpose of Rule 82(B) is in particular to protect the right of the accused to be tried expeditiously and fairly, taking into consideration the interests of justice”.² The Defence argues, based on this decision, that both the severance of Protais Mpiranya from the other accused persons and the exclusion of witnesses that will testify only against Protais Mpiranya are done in view of the right of the Accused to be tried without

¹ The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme Bicomumpaka, Prosper Mugiraneza, ICTR-99-50-T.

² The Prosecutor v. Jean de Dieu Kamuhanda, ICTR-99-54-T, para. 4.

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undue delay. If the Prosecutor were allowed to call the witnesses in question, the aforementioned decision would be rendered useless.

13. The Defence further submits that the Prosecutor indicated the witnesses in question both in his witness summaries as well as in his statements made at the Pre-Trial Conference of 17 September 2004 as witnesses testifying only against the Accused Protais Mpiranya. The Defence therefore argues that it only makes sense to exclude those witnesses that according to the Prosecution's earlier assertions will testify against Protais Mpiranya only.

DELIBERATIONS

14. The Chamber likes to recall its Decision of 20 August 2004 which in pertinent part reads as follows:

«... la Chambre observe que ... la liste des témoins pourrait nécessiter certaines modifications, notamment le retrait des témoins dont le témoignage concernait exclusivement l'accusé Protais Mpiranya...»

15. As a matter of clarification, the Chamber wishes to underscore that while it made this observation in its Decision of 20 August 2004, it did not *order* the Prosecutor to amend or otherwise revise his list of witnesses as suggested by the Defence.

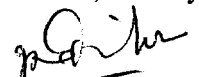
16. After having carefully examined the amended Indictment of 23 August 2004, the Pre-Trial Brief, the witness summaries and the Statements already available to the Chamber, the Chamber concludes that it would be premature at this stage of the proceedings to exclude witnesses LMC, DX, BB, GS, CJ and GFO from testifying based solely on the Defence's submission that they were originally listed to testify against the formerly co-Accused Mpiranya.

17. Having said that, the Chamber would like to remind the Prosecutor of his obligation to present only those witnesses that are necessary to prove the counts in the indictment against the Accused persons. The Chamber reminds the Prosecutor to avoid calling witnesses whose evidence is not probative of the guilt or innocence of the accused persons and may lead to needless consumption of time and resources.

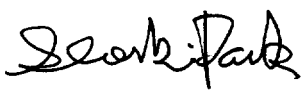
FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Motion.

Arusha, 13 May 2005


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

