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2005



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-01-73-T

10-10-2005

(3708 - 3708)

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, Presiding
Khalida Rachid Khan
Lee Gacuiga Muthoga

Registrar: Mr Adama Dieng

Date: 10 October 2005

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THE PROSECUTOR
v.
Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

DECISION ON

1. Prosecutor ex-parte confidential application in respect of Witness Statement under Rules 66 (c) and 73, 19 July 2005
2. *Requête pour exclure l'audition des témoins BIW, BIY, BIV, AVY, APJ, BCW, BIU, et Zuhdi Janbek*, 17 August 2005;
3. *Requête pour exclure l'audition du témoin ATM*, 31 August 2005;
4. *Requête en communication de preuve Re témoin KY*, 19 September 2005;
5. *Requête en communication et en exclusion de preuves relatives au témoin ADE*, 7 September 2005;
6. *Requête en communication de preuve Re témoin KY*, 19 September 2005;
7. Defence Motion for Disclosure of Witness ADE Unredacted Statement and English Translation Thereof; 22 September 2005

Rule 66 of the Rules of Procedure and Evidence

For the Office of the Prosecutor:

Mr Wallace Kapaya
Ms Gina Butler
Mr Iskandar Ismail
Ms Jane Mukangira

Defence Counsel:

Mr John Philpot
Mr Peter Zaduk

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3707

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

SITTING as Trial Chamber III, composed of Judges Inés Mónica Weinberg de Roca, Presiding, Khalida Rachid Khan, and Lee Gacuiga Muthoga (“Chamber”);

BEING SEIZED of

i) *Requête pour exclure l’audition des témoins BIW, BIY, BIV, AVY, APJ, BCW, BIU, et Zuhdi Janbek, enquêteur*, filed on 17 August 2005, and the Prosecutor’s written submissions in response to the same;¹

ii) *Requête pour exclure l’audition du témoin ATM*, filed on 31 August 2005, and the Prosecutor’s written submissions in response to the same;²

iv) *Requête en communication de preuve Re témoin KY*, filed on 19 September 2005, and the Prosecutor’s Response to the same filed on 20 September 2005;

HAVING HEARD the oral arguments made by both Parties in open session on 4 October 2005 which supersede their previous written submissions in respect of the same;

NOTING that the exclusion of a witness’s evidence as a remedy for late disclosure is too strong a sanction for untimely disclosure; it should be used only under exceptional circumstances, especially when the evidence is potentially relevant and of probative value. There are other more appropriate, and equally effective, remedies such as the postponement of the hearing and the recalling of the witness for cross-examination or further cross-examination. The Chamber considers that, in the present case, the postponement of the commencement of the trial gives the Defence additional time in which to prepare their Defence in respect of the evidence contained in the statements whose disclosure was late. The remedy of exclusion of evidence on the grounds of late disclosure is therefore inappropriate in this case. More appropriate remedies such as recall of witnesses in the event of discovery of matters that could not have been discovered without the disclosure may be considered if applied for.

NOTING that following the oral submissions of the Parties of 4 October 2005, the matters raised in the Defence Motion for Disclosure of Unredacted Statements relating to Witness ADE and of statements of ATM and KY (*Requête pour exclure l’audition du témoin ATM*, 31 August 2005; *Requête en communication de preuve Re témoin KY*, 19 September 2005) were withdrawn by the moving Party thereby rendering those Motions moot;³

BEING ALSO SEIZED of the Defence *Requête en communication de preuve suivant les Articles 66 et 68 du Règlement de procédure et de preuve : Re Témoin ADE*, filed on 7 September 2005 (“Defence Motion for Disclosure”); the Defence “Submission

¹ Prosecutor’s Response to Defence Motion to Exclude Witnesses BIW, BIY, BIV, AVY, APJ, BCW, BIU and Mr. Zuhdi Janbek, OTP Investigator (22 August 2005); *Réplique à la réponse du Procureur à la requête pour exclure l’audition des témoins BIW, BIY, BIV, AVY, APJ, BCW, BIU et Zuhdi Janbek, enquêteur* (27 August 2005); Prosecutor’s Rejoinder to Defence’s Reply dated 22 August 2005 on the Defence Motion Filed on 17 August 2005 to Exclude Witnesses BIW, BIY, BIV, AVY, APJ, BCW, BIU and Mr. Zuhdi Janbek. OTP Investigator (22 August 2005)

² Prosecutor’s Response to the Defence Motion to Exclude Witness ATM (1 September 2005); *Réplique à la réponse du Procureur à la requête pour exclure Témoin ATM* (5 September 2005); Prosecutor’s Rejoinder to Defence Reply to Exclude Witness ATM (6 September 2005).

³ *Requête pour exclure l’audition du témoin ATM, 31 August 2005; Requête en communication de preuve Re témoin KY, 19 September 2005*

Supplementing the Motion for Disclosure of Evidence Pursuant to Rules 66 and 68 of the Rules of Procedure and Evidence: Witness ADE” filed on 21 September 2005; and the Defence *Requête pour la communication des déclarations du témoin ADE non caviardées et les versions en anglais des dites déclarations* filed on 22 September 2005 (“Defence Motions on Witness ADE”);

CONSIDERING the Prosecution Response to the Defence Motions on Witness ADE, filed on 22 September 2005;

NOTING of the “Prosecutor’s Ex-Parte Confidential Application in Respect of a Witness Statement Under Rules 66(C) and 73 of the Rules of Procedure and Evidence” filed on 19 July 2005 (“Prosecution Motion”);

RECALLING the Decision on the Prosecutor’s Motion for Protective Measures for Victims and Witnesses, delivered on 25 February 2005;

NOTING the change of Witness ADE’s status and circumstances since the Ordered Protective Measures, and the resultant change of pseudonym and location of the Witness;

CONSIDERING that following oral submissions on the Prosecutor’s Motion, the subject matter of the *ex parte* application is now in the public domain and is no longer to be considered as *ex parte*;

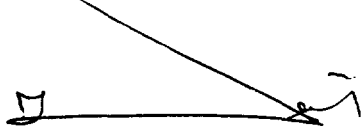
CONSIDERING the Statute of the Tribunal (“Statute”) and the Rules of Procedure and Evidence (“Rules”) particularly Rules 66, 69 and 75 of the Rules;

NOW DECIDES the matters based on the oral and written submissions of the Parties pursuant to Rule 73 of Rules; and

ORDERS the Prosecutor to disclose all statements of Witness ADE’s, and related documents, in its *unredacted* form, by 15 November 2005; and

DENIES the Motions in all other respects.

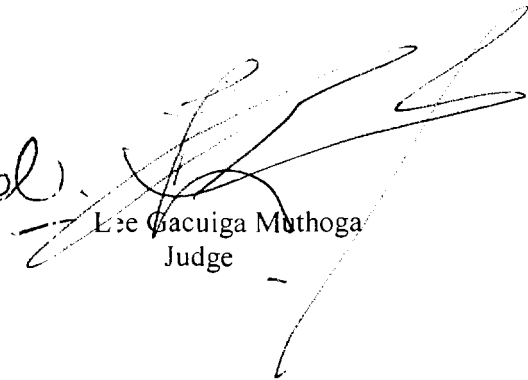
Arusha, 10 October 2005, done in English.



Inés Mónica Weinberg de Roca
Presiding Judge



Khalida Rachid Khan
Judge



Lee Gacuga Muthoga
Judge

