



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-T
10-4-2006
(4791-4784)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 7 April 2006

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

10-4-2006
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**DECISION ON DEFENCE MOTION TO EXCLUDE
THE TESTIMONY OF WITNESS SGM
*Rule 89 (C) of the Rules of Procedure and Evidence***

Office of the Prosecutor:

Wallace Kapaya
Sylver Ntukamazina
Charity Kagwi-Ndungu
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:

John Philpot
Peter Zaduk

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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 the Defence Confidential Motion to Exclude the Testimony of Witness SGM, filed on 24 March 2006 (“Defence Motion”);

CONSIDERING the Prosecution Response filed on 27 March 2006 (“Response”); the Defence Reply filed on 30 March 2006 (“Reply”); the Prosecution Rejoinder filed on the same date (“Rejoinder”); and the Second Defence Reply filed on 5 April 2006 (“Second Reply”);

NOW DECIDES the Motion on the basis of the written briefs of the parties pursuant to Rule 73 (A) of the Rules.

SUBMISSIONS

Defence Motion

1. Relying on Rule 89 (C), the Defence requests the Chamber to disallow the testimony of Witness SGM on the basis of irrelevance and incomplete and imprecise disclosure.
2. The Defence alleges that the evidence which Witness SGM is expected to present is irrelevant because it relates to events that occurred outside the Tribunal’s temporal jurisdiction and does not directly relate the Accused to any facts alleged in the Indictment.
3. The Defence also argues that disclosure provided by the Prosecution is incomplete and vague, making it impossible for the Defence to adequately prepare its case. While acknowledging that postponement of the hearing is a preferred remedy, the Defence asserts that this is unrealistic, in light of the scheduling for the final phase of the Prosecution case, which begins on 5 June 2006. Consequently, according to the Defence, the only available remedy at this stage of the proceedings is for the Chamber to disallow the testimony of Witness SGM.

Response

4. In its Response, the Prosecution asserts that the expected testimony of Witness SGM will provide evidence in support of several paragraphs of the Indictment, as indicated in the annex to its pre-trial brief. The Prosecution submits that it has made full and complete disclosure to the Defence.
5. The Prosecution also argues that the Defence has filed unnecessary annexes to its Motion. Invoking Rule 73 (F), the Prosecution requests that the Chamber sanction the Defence for wasting the Tribunal’s resources.

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Reply

6. The Defence reiterates the arguments in its Motion. In regard to the issue of sanctions, the Defence argues that a Motion should be complete. Therefore, it has filed *inter partes* correspondence to demonstrate due diligence in its efforts to obtain disclosure, before seizing the Chamber of the issue.

Rejoinder

7. The Prosecution reiterates its call for sanctions under Rule 73 (F) and maintains that the testimony of Witness SGM is relevant to the factual allegations in the Indictment. The Prosecution asserts that the limited temporal jurisdiction of the Tribunal does not bar evidence of entering into a conspiracy before 1994.

Second Reply

8. The Defence replies that material facts relating to events before 1994, which have not been alleged in the Indictment and are unknown to the Defence, should not be admitted into evidence. The Defence reiterates that the disclosed statements of Witness SGM do not relate to allegations in the Indictment concerning events that occurred prior to 1994.

DELIBERATIONS

9. The Chamber recalls that in the Prosecution's pre-trial brief, the anticipated evidence of Witness SGM was summarized by the Prosecution as follows: "[SGM] [w]ill testify as the Accused's participation in Rouseau [*sic!*] Zero ('Zero Network') and as a member of the Akazu." Because this issue is clearly raised in the Indictment, the Chamber finds that the anticipated evidence to be presented by Witness SGM is relevant to the case. In regard to the presentation of evidence, the Chamber reminds the Parties that it is the Prosecution's responsibility to determine how it will prove the counts charged against the Accused in the Indictment.

10. With regard to the issue of disclosure, the Chamber is of the view that the Defence has not specifically indicated in what respects the disclosure is imprecise or incomplete. Consequently, the Chamber does not find that the Prosecution has failed to make full disclosure, pursuant to Rule 66 (A) (ii).


11. The Chamber agrees with the Prosecution that it is unnecessary and is a waste of time and resources to file documents that are already part of the case file. The Chamber disapproves of this practice.


12. Rule 46 (A) provides for a Chamber "after a warning, [to] impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice". The Chamber finds that, in addition to including unnecessary documents in the filing, the Defence Motion itself is frivolous and constitutes an abuse of process under Rule 73 (F). However, since this is the first occasion for

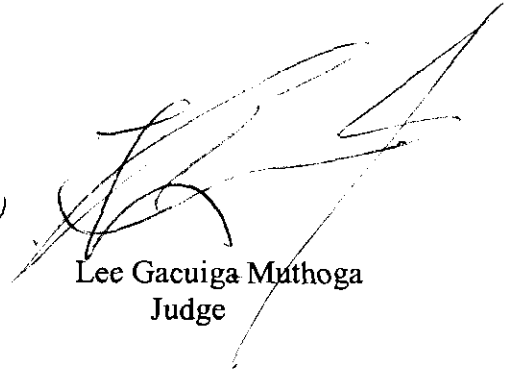
the Chamber to reprimand the Defence on this matter, the Chamber will not impose sanctions.

FOR THE ABOVE REASONS, THE CHAMBER DENIES THE MOTION IN ITS ENTIRETY.

Arusha, 7 April 2006.


Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lee Gacuiiga Muthoga
Judge

