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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 14 July 2006

ICTR-97-29-1
14-07-2006
(4874-4871)

The PROSECUTOR

v.

Sylvain NSABIMANA
Case No. ICTR-97-29A-T
Joint Case No. ICTR-98-42-T

DECISION
ON SYLVAIN NSABIMANA'S EXTREMELY URGENT MOTION TO DROP AND
ADD WITNESSES

JUDICIAL RECORDS ARCHIVES
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Office of the Prosecutor

Ms Silvana Arbia, Senior Trial Attorney
Ms Adelaide Whest, Trial Attorney
Ms Holo Makwaia, Trial Attorney
Mr Gregory Townsend, Trial Attorney
Ms Althea Alexis Windsor, Trial Attorney
Ms Astou Mbow, Case Manager

Defence Counsel

Ms Josette Kadji

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

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the “Chamber”);

BEING SEIZED of the “*Requête en extrême urgence de Sylvain Nsabimana aux fins d’adjonction et de retrait de témoins sur sa liste*”, filed on 7 July 2006 (the “Motion”) and the annex thereof, filed on the same day;

CONSIDERING the “Prosecutor’s Response to the Motion of Sylvain Nsabimana to Withdraw 7 Witnesses and Add 1 New Witness”, filed on 10 July 2006 (the “Prosecution Response”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular Rule 73 *ter* (E);

NOW DECIDES the matter, pursuant to Rule 73 (A), on the basis of the written submissions of the Parties.

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence moves the Chamber for leave to delete from its witness list the following witnesses: DECA, TEME, JOJO, HINO, QN3, QN5, and QN6; and to add one, Witness AGWA. The Defence alleges that it had lost contact with Witness AGWA, so he could not be included in Nsabimana’s initial witness list.
2. The Defence argues that Witness AGWA is relevant to Nsabimana’s case, as he is the sole witness who will testify on Nsabimana’s character. This proposed witness should testify at the end of Nsabimana’s case, allowing the other Parties to prepare adequately, and that his expected examination-in-chief would take only four hours.

The Prosecution

3. The Prosecution submits that the Defence has failed to provide the *will-say* statement of Witness AGWA in support of its request for the addition of this witness. The Prosecution states, however, that it does not object to the Motion, subject to adequate disclosure of Witness AGWA’s intended testimony and his or her personal particulars by the Defence, in due time.

DELIBERATIONS

4. The Chamber recalls Rule 73 *ter* (E), which provides that: “After commencement of the Defence case, the Defence, if it considers it to be in the interest of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.”

• **On the Deletion of Witnesses**

5. The Chamber finds that the proposed deletion of seven witnesses could significantly expedite the proceedings and enhance judicial economy.¹ Therefore, the Chamber grants the Defence request to delete Witnesses DECA, TEME, JOJO, HINO, QN3, QN5, and QN6 from its initial list.

• **On the Addition of Witness AGWA**

6. The Chamber notes that the Defence did provide Witness AGWA's *will-say* statement on 7 July 2006 in a separate document, contrary to the Prosecution submissions.

7. The Chamber recalls decisions granting motions for additional witnesses by this Tribunal in the interests of justice, and notes that the moving party has always provided an indication of the proposed witness' testimony, in the form of a sufficient witness summary or *will-say* statement. The moving party has also to demonstrate the relevance of the evidence to the proceedings and the estimated length of the examination-in-chief. This is to ensure that there is no prejudicial element of surprise to the other Parties and that there exists sufficient information with which to prepare their examinations and make the necessary investigations if required. More importantly, it allows the Chamber to make a proper determination as to the materiality and probative value of the proposed testimony to the proceedings.²

8. After reviewing Witness AGWA's *will-say* statement, the Chamber observes that this witness will testify, among others, on the pacification meeting convened by the Accused Nsabimana at Nyarutegia market.³ The Chamber is satisfied that Witness AGWA's proposed testimony contains relevant and probative evidence which the Chamber should hear in the interests of justice. The Chamber therefore grants the motion for the addition of Witness AGWA as a Defence Witness for Nsabimana.

9. Finally, the Chamber orders the Defence to call Witness AGWA to testify towards the end of Nsabimana's case to allow the other Parties to prepare adequately.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

GRANTS the Defence Motion to delete from its list Witnesses DECA, TEME, JOJO, HINO, QN3, QN5 and QN6;

~~**GRANTS** the Defence Motion to add Witness AGWA to its list; and~~

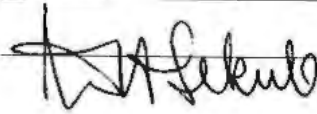
¹ *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motion to Drop and Add Witnesses (TC), 30 March 2004, para. 40.

² *Nyiramasuhuko et al.*, Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Ntahobali (TC), 26 August 2005 para. 40; *Nyiramasuhuko et al.*, Decision on the Prosecutor's Motions for Leave to Call Additional Witnesses and for the Transfer of Detained Witnesses (TC), 24 July 2001; Decision on the Prosecutor's Motion to Modify the Sequence of Appearance of Witnesses on her Witness List (TC), 27 February 2002; *Bagosora et al.*, Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E) (TC), 21 May 2004; *Nyiramasuhuko et al.*, Decision on Arsène Ntahobali's Motion to Amend His Witness List and to Reconsider the Decision of 26 August 2005 Titled: "Decision on the Defence Motion to Modify the List of Defence Witnesses for Arsène Shalom Ntahobali" (TC), 27 January 2006, para. 20.

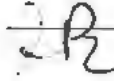
³ In the Motion it is stated NYARUTEGIA whereas in the *will-say* it is written NYARUTELIA.

ORDERS the Defence to call Witness AGWA to testify towards the end of its case

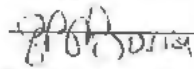
Arusha, 14 July 2006



William H. Sekule
Presiding Judge



Arlette Ramarison
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

