

-0413/1

ICTR-97-29-T
17-08-2006
(4976-4972)

4976
PM



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: 17 August 2006

The PROSECUTOR

v.

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

2006 AUG 17 P 4: 20
JUDICIAL RECORDS ARCHIVES
RECEIVED

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

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, Lead Counsel
Pierre Weledji Tientcheu, Legal Assistant
Arsène Raoul Djamfa, Legal Assistant
Jean Michel Youmbi, Legal Assistant

THE TRIBUNAL INTERNATIONAL CRIMINAL 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 de retrait et d’adjonction de témoins sur sa liste*”, filed on 27 July 2006 (the “Motion”);

CONSIDERING

- i) the “Prosecutor’s Response to the *Requête en extrême urgence de Sylvain Nsabimana aux fins de retrait et d’adjonction de témoins sur sa liste Article 73ter E) du Règlement de Preuve et de Procédure*”, filed on 31 July 2006 (the “Prosecution Response”);
- ii) the “*Observations de Sylvain Nsabimana sur la réponse du Procureur à sa «Requête en extrême urgence de Sylvain Nsabimana aux fins de retrait et d’adjonction de témoins sur sa liste»*”, filed on 3 August 2006 (the “Defence Reply”);

CONSIDERING the Statute of the tribunal (the “Statute”) and the Rules of Procedure and Evidence (“The Rules”), particularly Rule 73 *ter* B) and E) of the Rules;

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

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence, recalling its Pre-Defence Brief filed 30 December 2004, and the Chamber’s Decision of 14 July 2006, granting its Motion to add one witness and to remove seven others from its initial list of witnesses, requests the Chamber to grant it leave to remove three witnesses (JEJE, DOS, and QN1) from its list of witnesses and add one witness (DEDE).
2. The Defence requests the addition of Witness DEDE who it claims could not be added to the Defence’s initial list of witness, as he could not be found at the time. It was only in July 2006 that the Defence was able to trace the witness’ whereabouts.
3. The Defence submits that, according to the relevant will-say statement attached to the Motion, Witness DEDE is expected to testify in chief for about four hours, and essentially with regard to the Accused’s character, since the proposed witness has known him for many years, the installation of the Accused as *Préfet*, the events at Mbazi and the arrests of the authors of the crimes at the behest of the Accused. At the same time, he is expected to contradict the testimony of Prosecution Witness SJ, whom he knew during the events of 1994, and about the numerous displacements at the *préfectural* office and the requisition of petrol. The Defence further submits that Witness DEDE is important to its case, because to this moment, he is the only witness who will talk about the events mentioned above.

4. The Defence, recalling the jurisprudence of the Tribunal, in particular in the case of *Nahimana*,¹ submits that the addition of Witness DEDE will not cause prejudice to any of the Parties since he will be called at the end of the Defence case, thus allowing the other Parties to prepare their cross-examination.

The Prosecution

5. The Prosecution submits that it has no objections to the Defence's Motion with respect to the dropping of the witnesses. Furthermore, it does not oppose the request to add Witness DEDE if the Chamber decides that the criteria for granting the motion have been met.
6. The Prosecution underscores and requests that its right to have 21 days to investigate the allegations of the witness before his cross-examination, pursuant to Rule 73 of the Rules, is preserved.
7. However, the Prosecution argues that the will-say statement submitted for Witness DEDE is vague and ambiguous and constitutes insufficient notice of the expected testimony. It requests that the Defence give "further and better particulars" of the expected testimony of the witness.
8. The Prosecution requests that the Chamber order the Defence to disclose the expected order of appearance of the upcoming witnesses.

The Defence Reply

9. The Defence submits that it does not agree with the Prosecution demand for further information about Witness DEDE, saying that it will not provide personal information about the witness until he is added onto the witness list. It assures the court that as soon as the witness is added on to the list, the Defence will disclose the witness' personal particulars within the prescribed timeframes.
10. The Defence also submits that the Prosecutor's claim that Witness DEDE's statement is vague is "not pertinent."

HAVING DELIBERATED,

11. The Chamber has considered the submissions of the Parties, noting that none of the Defence Teams have filed Responses to the Motion.
12. The Chamber recalls Rule 73ter (E) of the Rules, which provides that:

¹ *Prosecutor v. Nahimana et. al.*, ICTR-99-52-T, (TC) Decision on the Defence Motion to Re-instate the List of Witnesses for Ferdinand Nahimana, Pursuant to Rule 73ter, at para. 6.

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 which witnesses are to be called.

13. The Chamber notes that the Prosecution offers no specific objection to the Defence request to add or delete some of its witnesses, and reminds the Chamber of its right to a time period of 21 days in which to prepare, before a new witness can be brought to the stand.

On the Deletion of Witnesses

14. The Chamber is satisfied that the proposed deletion of three witnesses could expedite the proceedings and enhance judicial economy.² Accordingly, the Chamber grants the Defence request to delete Witnesses JEJE, DOS, and QN1 from the Defence's list of witnesses.

On the Addition of Witness DEDE

15. The Chamber recalls its recent decision in *Nteziryayo*, in which it noted:

The moving party has always provided an indication of the proposed witness' testimony, in the form of a witness summary or will-say statement. The moving party has also to demonstrate the relevance of the evidence to the proceedings and to provide 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.³

16. The Chamber notes that according to the Defence, Witness DEDE's expected testimony covers the Accused's character, the installation of the Accused as *Préfet*, the events at Mbazi, and counters the testimony of Prosecution Witness SJ, whom Witness DEDE knew during the events of 1994. Witness DEDE is also expected to testify about the numerous displacements at the *préfectural* office and the requisition of petrol. He therefore appears to be an important witness for the Defence. It is the

² *The Prosecutor v. Nyiramasuhuko et al.*, T. 18 October 2004, p. 20. Also, *The Prosecutor v. Nteziryayo*, Decision on Alphonse Nteziryayo's Motion to Modify His Witness List (TC), 14 July 2006, para. 26.

³ *The Prosecutor v. Nteziryayo*, Decision on Alphonse Nteziryayo's Motion to Modify His Witness List (TC), 14 July 2006, para. 27. Also, *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.

Chamber's opinion that the proposed testimony of Witness DEDE may be material and may have probative value to the case of the Accused. The Chamber thus grants the Defence request to add him to his list of witnesses.

17. With regard to the request for timely disclosure of Witness DEDE's identifying information, the Chamber notes that the Defence is required to provide such identifying details to the other Parties 21 days before Witness DEDE testifies. Accordingly, the Chamber orders it to make a timely disclosure of the identifying information of Witness DEDE, so that the other Parties may prepare their cross-examination. Furthermore, the Chamber orders the Defence to call the witness towards the end of its case.

On the Prosecution's other Prayers

18. The Chamber recalls the Prosecution's submissions that Witness DEDE's will-say statement is too vague, particularly with regard to its paragraph 9, which indicates, "Witness DEDE will contradict 'certain allegations' of the Prosecution witness." The Chamber considers that the particular wording of this sentence is imprecise as to the exact allegations Witness DEDE is expected to contradict. The Chamber finds that this type of imprecision may impede the other Parties' right to sufficiently investigate the allegations and conduct cross-examination. The Chamber therefore orders the Defence to provide further and better particulars to Witness DEDE's will-say statement in that regard.

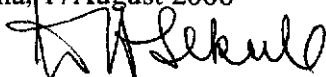
FOR THE ABOVE REASONS, THE TRIBUNAL,

GRANTS the Defence Motion, and orders the Defence to delete Witnesses JEJE, DOS, and QN1 from its list;

GRANTS the Defence Motion to add Witness DEDE to its list, and;

- I ORDERS** the Defence to make timely disclosure of the identifying information of Witness DEDE;
- II ORDERS** the Defence to provide further and better particulars to Witness DEDE's will-say statement on the issue of contradicting the Prosecution witness concerned; and
- III ORDERS** the Defence to call Witness DEDE towards the end of its case.

Arusha, 17 August 2006



William H. Sekule
Judge President



Arlette Ramarosoa
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

