



UNITED NATIONS
NATIONS UNIES

ICTR-2001-73-T
13-10-2006
(5491 - 5488)
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: 13 October 2006

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

**DECISION ON THE PROSECUTION MOTION FOR SEVERENCE AND
EXCLUSION OF PARTS OF THE PRE-DEFENCE BRIEF**

Office of the Prosecutor:
Wallace Kapaya
Charity Kagwi-Ndungu
Sylvester Ntukamazina
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:
John Philpot
Peter Zaduk

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INTRODUCTION

1. The Prosecution's case against the Accused closed on 28 June 2006. The Defence will start the presentation of its case on 30 October 2006. On 1 September 2006 the Defence filed a Pre-Defence Brief (the "Pre-Defence Brief") pursuant to Rule 73 *ter* of the Rules of Procedure and Evidence (the "Rules").
2. The Prosecution moves the Chamber to sever and exclude parts of the Pre-Defence Brief as outside the scope of Rule 73 *ter* of the Rules¹ and as contravening the Chamber's Decision of July 2006.² The Defence Response was filed on 7 September 2006.³ The Prosecution Reply followed on 8 September 2006.⁴

SUBMISSIONS

3. The Prosecution requests that the Chamber sever and exclude paragraphs 55-62 of the Pre-Defence Brief on the grounds that these paragraphs are arguments and have no relevance under Rule 73 *ter* of the Rules. The Prosecution further requests that paragraphs 63-66 be severed and excluded, and that certain Office of the Prosecutor ("OTP") staff be removed from the list of Defence witnesses, because they relate to issues determined in the Chamber's Decision of July 2006. The Prosecution argues that the Defence is attempting to re-argue a motion that has already been decided and calls for sanctions under Rules 73 and 46 of the Rules.
4. To enable it to adequately prepare for trial, the Prosecution also asks that the Chamber order the Defence to file a final witness list and list of exhibits, as well as a summary of the proposed testimony of the Accused.
5. The Defence replies that paragraphs 55-62 of the Pre-Defence Brief inform the Chamber of the status of its trial preparation. Paragraphs 63-66 and witnesses 48-53 are necessary to preserve its right to appeal the Decision of July 2006.
6. The Defence submits that it will be prepared to furnish a list of potential witnesses by 10 October 2006. The Defence states that a summary of the Accused's testimony will only be submitted if a final decision for him to testify is made. Finally, the Defence submits that during the Status Conference of 30 June 2006 the Prosecution accepted the fact that only the Defence exhibits which were ready would be filed.

¹ "Prosecutor's Motion for Severance and Exclusion of Parts of the Defence Brief Filed Under Rule 73 *ter* of the Rules of Procedure and Evidence" filed on 4 September 2006 (the "Prosecution Motion").

² "Decision on the Defence Motion for Disclosure of Exculpatory Information with Respect to Prior Statements of Prosecution Witnesses", filed on 6 July 2006 (the "Decision of July 2006").

³ "Defence Reply to Prosecutor's Motion for Severance and Exclusion of Parts of Defence Brief", filed on 7 September 2006 (the "Defence Response").

⁴ "Prosecutor's Response to the Defense Reply to the Prosecutor's Motion for Severance and Exclusion of Parts of the Defence Brief Filed Under Rule 73 *ter* of the Rules of Procedure and Evidence", filed on 8 September 2006 (the "Prosecution Reply").



7. The Prosecution adds that absent of a showing of malfeasance or other irregularities, the Chamber has held that parties to the proceeding may not call as witnesses members of the other party to the proceeding. The Prosecution submits that even if the Accused chooses not to testify he will suffer no harm by filing a summary of his proposed testimony pursuant to Rule 73 *ter* (B) (iii).

DELIBERATIONS

8. The Pre-Defence Brief is relevant only so far as it provides details outlining the Defence's theory of its case. Facts and arguments which are outside that scope are irrelevant to the Chamber, even if they remain within the Pre-Defence Brief. The Chamber, therefore, finds no reason to sever and exclude paragraphs 55-62 of the Pre-Defence Brief, which in no way prejudice the Prosecution or hinder the functions of the Chamber.

9. In its Decision of July 2006, the Chamber found that the Defence had not shown any malice or misfeasance by OTP staff in recording witness statements, and that, therefore, the Defence was not entitled to call them as witnesses.⁵ In paragraphs 63-66 of its Pre-Defence Brief, the Defence revives the arguments already rejected by the Chamber. The Defence also lists six OTP staff as witnesses 48-53 in Appendix A. The Defence has not made any showing that these witnesses are relevant to matters other than those previously determined in the Decision of July 2006. Because the inclusion of these witnesses contravenes the Decision of July 2006, the Chamber orders the Defence to remove witnesses 48-53 from its witness list. Moreover, the Chamber will not consider paragraphs 63-66 of the Pre-Defence Brief.

10. The Chamber notes that the Defence filed a final witness list on 9 October 2006.⁶ The Prosecution's arguments related to this list are, therefore, now moot.

11. The Prosecution filed many exhibits that were not annexed to its Pre-Trial Brief. The Chamber notes that during the Status Conference, the Prosecution acknowledged that only those exhibits which were ready would be filed with the Pre-Defence Brief.⁷ The Chamber, therefore, denies the Prosecution's request regarding Defence exhibits.

12. The Chamber will not require the Accused to provide a summary of his proposed testimony.

⁵ The Decision of July 2006, paras. 13-17.

⁶ *Les témoins en défense. résumés des sujets de leurs témoignages et exposé sommaire additionnelle quant aux témoins en défense*, filed on 9 October 2006.

⁷ Status Conference, T. 30 June 2006, p. 6.

5488

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution Motion in part;

ORDERS the Defence to remove witnesses numbered (48) "Me (sic) Stephen Rapp", (49) "Zudhi Janbek", (50) "Rapp's Interpreter", (51) "Gina Butler", (52) "Butler Z Janbek's investigator", and (53) "Butler's interpreter" from the Defence witness list;

DENIES the Prosecution Motion in all other respects.

Arusha, 13 October 2006, in English.

Inés Mónica Weinberg de Roca
Presiding Judge

Khalida Rachid Khan
Khalida Rachid Khan
Judge

Lee Gacuiya Muthoga
Lee Gacuiya Muthoga
Judge

