

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1913
#12

ICTR-01-63-T
25-1-2007

(1913 - 1911)

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 25 January 2007

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-T

2007 JAN 25 1 P 5: 41
JUDICIAL RECORDS/ARCHIVES
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**DECISION ON THE PROSECUTION MOTION TO HEAR THE TESTIMONY OF
WITNESS LM BY VIDEO-LINK**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niane

Defence Counsel:

Denis Turcotte
Benoît Henry

INTRODUCTION

1. The trial began on 25 September 2006. The second trial session started on 9 January 2007, and the prosecution is scheduled close its case on 31 January 2007. On 24 January 2007, the Prosecution filed an Extremely Urgent Motion for authorization to allow Witness LM, a protected witness, to testify via video-link. The Defence filed its opposition to the Motion the following morning, 25 January 2007.

DISCUSSION

2. The Defence asserts that the recognized criteria have not been satisfied and that the video-link testimony would violate the rights of the Accused. It argues that Witness LM's testimony is not important to the trial since it is merely cumulative to testimony from other witnesses.¹ The Defence asserts that in the absence of affidavit testimony, it has not been shown that the witness is unable to come to the seat of the Tribunal. Finally, the Defence submits that the Prosecution lacked diligence in arranging Witness LM's testimony when these problems were originally brought to its attention on 11 January 2007.

3. The general principle enshrined in Rule 90 (A) of the Rules of Procedure and Evidence is that witnesses shall be heard directly by the Chamber. Although the Rules do not expressly provide for evidence to be heard via video-link, Trial Chambers have been exercising their discretion to allow it, when it is in the interests of justice to do so relying on the Chamber's power to issue orders necessary for the conduct of the trial pursuant to Rule 54 of the Rules or as a measure to protect the witness in accordance with Rule 75 of the Rules.² The principles extracted from the many decided cases indicate that testimony may be heard by video-conference in lieu of the physical appearance of a witness where it is in the interests of justice, based on an assessment of: the importance of the testimony; the inability or unwillingness of the witness to attend; and whether good reason has been adduced for that inability or unwillingness.³ In doing so, Chambers also took into consideration the rights of the accused, particularly that the ability of the accused to confront and cross-examine the

¹ See Defence Response, para. 8.

² Rule 54 provides: "At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial". Rule 75(A) reads: "A Judge or a Chamber, *proprio motu* or at the request of either party, or of the victim or witness concerned, or of the Victims and Witnesses Support Unit, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused".

³ See for example, *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Prosecutor's Motion for Special Protective Measures for Witness ADE (TC), 3 May 2006, para. 4; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, para. 7; *Prosecutor v. Aloys Simba*, Decision on the Defence Request for Taking the Evidence of Witness FMP1 by Deposition (TC), 9 February 2005, para. 5.

witness was not diminished because the witness was not physically present in the courtroom but appeared on a video screen through a closed circuit broadcast.⁴

4. Witness LM's statements reveal that the witness is a professional person named in the Indictment whose expected testimony directly relates to allegations against Nchamihigo and to special relationships with victims and to the Accused himself. The proposed testimony is important to the case and although it could be considered as cumulative the Chamber considers that the standing of the witness would assist its deliberations.

5. Although there was no affidavit evidence, there is a history to the testimony of this witness. The witness has already testified at the Tribunal and the Chamber is satisfied of the willingness to testify.⁵ However the Prosecution has demonstrated that there are good reasons the witness' inability to travel to Arusha because of travel restrictions currently imposed by the employer.

6. The Prosecution has demonstrated that since 11 January, when it received notice of the travel problems being encountered by the witness, it entered into negotiations with the employer and although it failed to get permission for travel it obtained agreement to facilitate testimony by video-link. The Chamber does not conclude that there has been lack of diligence.

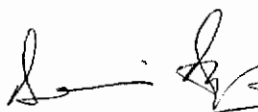
7. Consequently the Chamber is not persuaded by any of the defence challenges to the motion and is satisfied that it is in the interests of justice to grant the application for video-link testimony.

FOR THOSE REASONS, THE CHAMBER

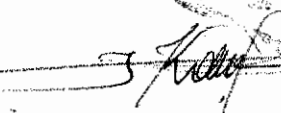
I. GRANTS the Motion for Witness LM's testimony to be heard via video-link pursuant to Rule 54 of the Rules of Procedure and Evidence;

II. REQUESTS the Registrar to assist in making the necessary arrangements for Witness LM to testify by way of secure audio-video transmission link on Monday, 29 January 2007, and that it does so in a confidential manner.


Arusha, 25 January 2007, done in English.



Dennis C. M. Byron
Presiding Judge



Gerdao Gustave Kam
Judge



Robert Fremr
Judge

[Seal of the Tribunal]

⁴ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Prosecutor's Motion for Special Protective Measures for Witness ADE (TC), 3 May 2006, paras. 5, 6; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, para. 12.

⁵ See Prosecution Motion, para. 17.



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA**

Date: 25 January 2007	Case Name / Affaire: The Prosecutor vs. Simeon NCHAMIHIGO		
	Case No /Affaire No.: ICTR-0163-I		
To: A:	<input type="checkbox"/> TC1	received by / reçu par:	ALO: received by / reçu par
	<input type="checkbox"/> Judge E. Mose, President	<input type="checkbox"/>
	<input type="checkbox"/> Judge J. R. Reddy	<input type="checkbox"/>
	<input type="checkbox"/> Judge S. A. Egorov	<input type="checkbox"/>
	<input type="checkbox"/> Judge F. Lattanzi (Mpambara)	<input type="checkbox"/>
	<input type="checkbox"/> Judge F. R. Arrey (Karera)	<input type="checkbox"/>
	<input type="checkbox"/> SLO	<input type="checkbox"/>
	<input type="checkbox"/> C. Gosnell, Co-ordinator	<input type="checkbox"/>
	<input type="checkbox"/> TC2	<input type="checkbox"/>
	<input type="checkbox"/> Judge W. H. Sekule	<input type="checkbox"/> (Vacant).....
	<input type="checkbox"/> Judge A. Ramaroson	<input type="checkbox"/> M. Andrianaivo.....
	<input type="checkbox"/> Judge K. R. Khan	<input type="checkbox"/> (Vacant).....
	<input type="checkbox"/> Judge A. J. N. de Silva	<input type="checkbox"/> I. Endeley.....
	<input type="checkbox"/> Judge S. B. Bossa (Nyiramashukuku et al.)	<input type="checkbox"/> K. Greve.....
	<input type="checkbox"/> Judge F. Lattanzi (Muvunyi)	<input type="checkbox"/> P. Mathiam.....
	<input type="checkbox"/> Judge L. G. Muthoga (Bizimungu et al.)	<input type="checkbox"/> S. Unnikrishnan.....
	<input type="checkbox"/> Judge F. R. Arrey (Muvunyi)	<input type="checkbox"/> K. Ardault.....
	<input type="checkbox"/> Judge E. F. Short (Bizimungu et al.)	<input type="checkbox"/> C. Duffy.....
	<input type="checkbox"/> Judge T. Hikmet (Ndindiliyimana et al.)	<input type="checkbox"/> B. Zehnder.....
	<input type="checkbox"/> Judge S. K. Park (Ndindiliyimana et al.)	<input type="checkbox"/> B. Zehnder.....
	<input type="checkbox"/> M. Niang, SLO	
	<input type="checkbox"/> A. Leroy, Co-ordinator	
	<input type="checkbox"/> A. Marong, Judgement Co-ordinator	
	<input type="checkbox"/> S. Mawalla, Judgement Co-ordinator	
	<input type="checkbox"/> W. Romans, Judgement Co-ordinator	
<input checked="" type="checkbox"/> TC3	<input type="checkbox"/>	
<input type="checkbox"/> Judge A. Vaz (Seromba)	<input type="checkbox"/> P. Mathiam.....	
<input type="checkbox"/> Judge I. M. Weinberg de Roca	<input type="checkbox"/> C. Rassi.....	
<input type="checkbox"/> Judge K. R. Khan	<input type="checkbox"/> (Vacant).....	
<input checked="" type="checkbox"/> Judge D. C. M. Byron	<input type="checkbox"/> J. Greenspoon.....	
<input type="checkbox"/> Judge F. Lattanzi (Bikindi & Rukundo)	<input type="checkbox"/> P. Mathiam.....	
<input type="checkbox"/> Judge L. G. Muthoga (Zigiranyirazo)	<input type="checkbox"/> S. Unnikrishnan.....	
<input type="checkbox"/> Judge F. R. Arrey (Rukundo)	<input type="checkbox"/> K. Ardault.....	
<input type="checkbox"/> Judge E. F. Short (Karemara et al.)	<input type="checkbox"/> C. Duffy.....	
<input type="checkbox"/> Judge K. Hökborg (Seromba & Rwamakuba)	<input type="checkbox"/> (Vacant).....	
<input type="checkbox"/> Judge G. G. Kam (Seromba, Karemara et al. & Rwamakuba)	<input type="checkbox"/> M. I. Mbadanga.....	
<input type="checkbox"/> E. O'Donnell, SLO		
<input type="checkbox"/> C. Denis, Co-ordinator (Karemara et al. & Rwamakuba)		
<input type="checkbox"/> H. Gogo, Co-ordinator (Seromba)		
<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR			
<input type="checkbox"/> Senior Trial Attorney in charge of case: A. Van	received by	
<input checked="" type="checkbox"/> DEFENSE <i>Souswahan</i> <i>26/1/2007</i>			
<input type="checkbox"/> Accused / Accusé: S. Nchamihigo		complete / remplir "CMS4 FORM"	
<input type="checkbox"/> Lead Counsel / Conseil Principal.... D. Turcotte			
<input type="checkbox"/> In / à Arusha Arusha(signature)	<input type="checkbox"/> by fax complete / remplir "CMS3bis FORM"	
<input type="checkbox"/> Co-Counsel / Conseil Adjoint.... A. O'Shea			
<input type="checkbox"/> In / à Arusha Arusha(signature)	<input type="checkbox"/> by fax complete / remplir "CMS3bis FORM"	
All Decisions: <input type="checkbox"/> Appeals Chamber Unit, The Hague <input type="checkbox"/> S. Chenault, Jurist Linguist			
All Decisions & Important Public Documents: <input type="checkbox"/> Press & Public Affairs <input type="checkbox"/> Legal Library			
From: <input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input checked="" type="checkbox"/> A. N'GUM (TC3) <input type="checkbox"/> F. A. Talon			
De: <i>Arrey 24/01/07</i> (Appeals/Team IV)			
Cc: <input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input type="checkbox"/> Deputy Registrar <input type="checkbox"/> S. Menon <input type="checkbox"/> M. Niang <input type="checkbox"/> S. van Driessche			
<input type="checkbox"/> WVSS <input type="checkbox"/> Spokesperson <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> DCDMS <input type="checkbox"/> P. Enow			
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LM BY VIDEO-LINK : RULE 54 OF THE RPE

Date Filed / Date enregistrée **Pages**
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