

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.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 Vitcims 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 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, 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.

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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.

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The Prosecutor v. Simeon Nchamihigo, Case No. ICTR-2001-63-T

⁴ The Prosecutor v. Édouard Karemens, ¹⁴ the Urgirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-T, Decision on Prosecutor's Motion for Specific 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.



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