



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-01-63-T
05-02-2007
(1928-1920)

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VB

OR: ENG

TRIAL CHAMBER III

Before Judge: Gherdao Gustave Kam
*sitting pursuant to Rule 15bis of the Rules of
Procedure and Evidence*

Registrar: Adama Dieng

Date: 5 February 2007

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-T

2007 FEB -5 P 5:57
2007 Jan 6/6/2007
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**DECISION ON DEFENCE MOTION TO AUTHORIZE THE PRESENCE OF
INVESTIGATORS IN THE COURTROOM**

Rule 73 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

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1. The trial in this case started on 25 September 2006. During a Status Conference on 20 October 2006, the Defence requested the Chamber to permit its investigator to be present in the courtroom as he had been prevented from doing so that morning from a member of the Tribunal's Security Personnel.¹ Upon further inquiry, the Defence reported that the Security Personnel explained that he was enforcing an order or an instruction which does not allow for investigators to be present in the courtroom.² At that time, the Chamber was not satisfied with the representations made by the Defence to support its application and requested clarification. As a result, on 22 January 2007, the Defence filed this Motion requesting the attendance of its investigators in the courtroom. On 29 January 2007, the Registrar, represented by Ms. N'gum, recalled the jurisprudence on this issue and submitted on behalf of the Registrar that the Security Personnel who had prevented the investigator from entering the courtroom did not have any authority from the Registrar to do so.³

2. The jurisprudence from this Tribunal and the International Criminal Tribunal for the Former Yugoslavia (ICTY) indicates that Defence Investigators have been authorized to be present in the courtroom as part of the Defence team.⁴ Most recently in the case of *Karemera et al.*, the Trial Chamber stated:

"9. The Chamber observes that neither the Rules nor the Statute explicitly prohibit investigators from attending open and closed court sessions. The Chamber also observes that being part of the Defence team, they are, in principle, allowed to attend closed sessions, and consequently, they are bound by any order made by the Chamber. The Chamber recalls that Lead Counsel is responsible for the management of the Defence team.

10. The Chamber notes the Registrar's policy as outlined in his submissions regarding the management of the Legal Aid Fund, in accordance with the functions assigned to him by the Statute and the Rules. The Chamber also notes that the Registrar based his submissions largely on considerations regarding the administration of funds and not the legal substance argued by the Defence.

11. The Chamber recalls the rights of the Accused as set out by Article 20(4)(b) of the Statute to be provided with adequate facilities in preparing and presenting his defence, and observes that whenever the presence of an investigator in Arusha during court sessions is considered to be necessary, the Defence could seize the Registrar with this matter by providing justification in order to support a request for adequate funding."⁵

¹ T. 20 October 2006 (Status Conference), pp. 5-6.

² T. 20 October 2006 (Trial), pp. 1-3.

³ Draft Transcript, 29 January 2007, pp. 41-42.

⁴ *The Prosecutor v. Edouard Karemera, Mathieu Ngirumpase and Joseph Nzirorera*, Case No. ICTR-98-44-PT, Decision on the Defence Motion to Permit Investigators to Attend Closed Sessions (TC), 18 August 2005, paras. 3-4; *Prosecutor v. Kordic and Cerkez*, Case No. IT-94-14/2, Order permitting Investigators to follow Proceedings (TC), 19 April 1999; *Prosecutor v. Naletilic and Martinovic*, Case No. IT-98-34, Decision on Prosecutor's Motion to Permit Investigators to Follow the Proceedings (TC), 31 August 2001; *Prosecutor v. Mrksic, et al.*, IT-95-13A, Order Permitting Investigators to Follow Proceedings (TC), 23 April 1998; See also from the Special Court for Sierra Leone, *Prosecutor v. Norman et al.*, Case No. SCSL-2004-14-T, Decision on Joint Motion by Sam Hinga Norman, Moinina Fofana, and Allieu Kondiwa Seeking Permission for Defence Investigators to Sit in Court During Closed Sessions, 28 February 2005.

⁵ *Id.* at paras. 9-11.

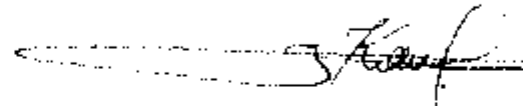
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FOR THOSE REASONS, THE CHAMBER

DECLARES the Motion moot.

Arusha, 5 February 2007, done in English.



Gberdao Gustavo Kam
Judge

[Seal of the Tribunal]





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Case Name:	The Prosecutor vs. Simeon NCHAMIHIGO			Case Number: ICTR-01-63-T
Dates:	Transmitted: 5 February 2007		Document's date: 5 February 2007	
No. of Pages:	3		Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
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