



UNITED NATIONS
NATIONS UNIES

ICTR-97-31-T
16-02-2007
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4676
Ivan

(4676 - 4673)

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 16 February 2007

THE PROSECUTOR

v.

Tharcisse RENZAHO

Case No. ICTR-97-31-T

2007 FEB 16 P 1:13
JUDICIAL RECORDS ARCHIVES
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DECISION ON PROSECUTION MOTION TO VARY WITNESS LIST

The Prosecution

Jonathan Moses
Karya Melliush
Ignacio Tredici
Shamus Mangan

The Defence

François Cantier
Barnabé Neukuic

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Prosecution motion to vary its witness list, filed on 6 February 2007;

CONSIDERING the Defence Response, filed on 12 February 2007, and the Prosecution Reply, filed on 13 February 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Prosecution requests leave to amend its witness list to add Witness ADU and to remove Witness BKX. Witness ADU can testify as to the origin of an audio cassette that the Prosecution claims records statements given by the Accused. It is argued that the testimony of Witness ADU will help to establish Renzaho's criminal intent, and that the examination-in-chief of the witness will be brief.¹ Witness BKX was to give evidence that he recognized the Accused's voice in the audio recording. The Defence agrees that Witness BKX should be removed, but rejects the addition of Witness ADU, stating that it is taken by surprise, both by the existence of the recording and by the presentation of Witness ADU, and that the audio cassette is inadmissible as an exhibit.

DELIBERATIONS

2. Rule 73 *bis* (E) of the Rules of Procedure and Evidence states that, after the commencement of trial, if the Prosecution considers it to be in the interests of justice, it may move the Trial Chamber for leave to vary the list of witnesses to be called. The final decision as to whether the variation is in the interests of justice rests with the Chamber.²

3. In determining whether or not to grant leave, the Chamber must assess both the "interests of justice" and the existence of "good cause" in the circumstances at hand.³ A variety of factors have been used in such an assessment, including

the sufficiency and time of disclosure of the witness's information; the materiality and probative value of the proposed testimony in relation to existing witnesses and allegations in the indictment; the ability of the other party to make an effective cross-examination of the witness; and the justification offered by the party for the addition of the witness.⁴

4. The removal of Witness BKX will economize judicial resources. The Prosecution has

¹ Motion, paras. 15, 18.

² *Prosecutor v. Nahimana*, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, para. 17.

³ *Bagosora et al.*, Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) (TC), 21 May 2004, para. 8.

⁴ *Bagosora et al.*, Decision on Bagosora Motion to Modify Its Witness List (TC), 11 September 2006, para. 3 (citation omitted).

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already presented four witnesses (ALG, GLJ, UB and AWE) who testified that they recognized Renzaho's voice on the recording. Consequently, the Prosecution request is granted.

5. Witness ADU allegedly made the audio recording himself, and no other witness will be called to testify as to the circumstances under which the recording was made. His testimony could prove material to the Prosecution case by shedding light on the provenance of the audio tape, which has been a matter of dispute between the parties.⁵ The Chamber has noted the Defence's arguments regarding the admissibility of the audio tape as an exhibit, including Rule 95 of the Rules as well as case law regarding Article 17 of the Covenant on Civil and Political Rights. However, these issues are separate from testimony about the origin of the recording.

6. The Chamber cannot see that the addition of Witness ADU will result in unfair surprise or prejudice to the Defence. On 22 January 2007, the Prosecution stated that its inquiries to try to locate the person who had originally made the recording had not yet been successful.⁶ In its Pre-trial Brief, filed on 31 October 2005, the Prosecution gave notice to the Defence of its intention to use an intercepted telephone conversation to demonstrate Renzaho's "intent to kill and/or cause serious bodily harm to the Tutsi group in whole or in part".⁷ In the witness summaries attached to the Pre-trial Brief, additional notice was given to the Defence that the Prosecution envisaged calling at least one witness (Witness BKX) to testify that it was Renzaho's voice on a recording of an intercepted telephone call, in which Renzaho allegedly talks about "extermination". Under these circumstances, the Chamber considers that the Defence will have adequate time to prepare for the testimony of Witness ADU, and concludes that the conditions for the Prosecution to modify its witness list by adding Witness ADU are fulfilled.

⁵ E.g., T. 8 January 2007 pp. 49-53; T. 22 January 2007 pp. 4-11.

⁶ T. 22 January 2007 p. 10.

⁷ The Prosecutor's Pre-trial Brief, para. 89.

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FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Prosecution motion to add Witness ADU to its list, as well as to remove Witness BKX from its list.

Arusha, 16 February 2007.



Erik Mose
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]





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I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

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| Case Name: | The Prosecutor vs. Renzaho | | | Case Number: ICTR-97-31-I |
| Dates: | Transmitted: 16.02.07 | | Document's date: 16.02.07 | |
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