



INTERNATIONAL
CRIMINAL TRIBUNAL

ICTR-00-56-T
13-03-2007
(63985-63982)

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Mwamp

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 13 March 2007

THE PROSECUTOR

v.

**AUGUSTIN NDINDILYIMANA
AUGUSTIN BIZIMUNGU
FRANÇOIS-XAVIER NZUWONEMEYE
INNOCENT SAGAHUTU**

CASE NO. ICTR-2000-56-T

JUDICIAL
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**DECISION ON BIZIMUNGU'S MOTION TO RECONSIDER THE SCHEDULING
ORDER OF 16 FEBRUARY 2007**

Office of the Prosecutor:

Ciré Aly Dié
Moussa Sefou
Segun Jegede
Abubacarr Tambadou

Felistas Mushi
Faria Rekkas
Anne Bodley

Defence Counsel for A. Ndingilyimana

Christopher Black & Patrick de Wolf
Defence Counsel for A. Bizimungu
Gilles St. Laurent & Ronnie Macdonald
**Defence Counsel for François-Xavier
Nzuwonemeye**

Charles Taku

Defence Counsel for Innocent Sagahutu

Fabien Segatwa & Seydou Doumbia

2007

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INTRODUCTION

1. The Prosecution closed its case on 7 December 2006. A Pre-Defence Conference was held on 15 February 2007 where the parties submitted their arguments as to when the next trial session should begin and which Defence team would be the first to present its defence. The Chamber issued a Scheduling Order on 16 February 2007 ordering Bizimungu to present his case starting on 16 April 2007, and for all of the Defence teams to file their pre-Defence briefs by 15 March 2007.¹

2. The Defence for Bizimungu filed the current request for the Chamber to reconsider the Scheduling Order and permit the Defence to file the pre-Defence brief by 15 May 2007 and to start its case on 1 June 2007.² It also requests that it be allowed up to 15 July 2007 to amend its pre-Defence brief regarding the exhibits it wishes to tender, the list of witnesses and their factual summaries. Both the Defence for Nzuwonemeye and for Sagahutu filed Motions which partially support Bizimungu's request.³ Nzuwonemeye also asks for more time to submit its pre-Defence brief although both he and Sagahutu oppose any changes to the Scheduling Order regarding the order of the presentation of the defence cases.

DELIBERATIONS

3. The Chamber has an inherent power to reconsider a previous decision in an exceptional circumstance if the moving party demonstrates 1) a new fact which, if it was known by the Chamber before it made its original decision, would have changed its outcome; 2) a material change in circumstances; or 3) that the original decision was erroneous and therefore prejudicial.⁴

4. The Defence for Bizimungu submits that following the Chamber's Order of 16 February 2007, it contacted several potential witnesses. According to the Defence, some of the witnesses who have expressed willingness to testify are not available during the trial session scheduled to start on 16 April 2007; some have health problems and will not be able to travel to Arusha or have requested that their testimonies be heard via video-link; some do not have travel documents or visas; some do not have legal status in their countries of residence and do not have assurances of being able to return once they have left those countries, and

¹ *Prosecutor v. Augustin Ndingiriyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, Innocent Sagahutu*, Case No. ICTR-2000-56-T, Scheduling Order Following the Pre-Defence Conference Held on 15 February 2007 (TC), 16 February 2007.

² *Demande de reconsidération de la décision de la Chambre intitulée "Scheduling Order Following the Pre-Defence Conference Held on 15 February 2007"* datée du 16 février 2007, filed on 1 March 2007 ("Motion for Reconsideration").

³ *Reponse du Capitaine Innocent Sagahutu a la "Demande de reconsidération de la décision de la Chambre intitulée "Scheduling Order Following the Pre-Defence Conference Held on 15 February 2007" datée du 16 février 2007"*, filed on 5 March 2007; Nzuwonemeye's Submissions in Support of Bizimungu's "*Demande de reconsidération de la décision de la Chambre intitulée "Scheduling Order Following the Pre-Defence Conference Held on 15 February 2007" datée du 16 février 2007"*, filed on 5 March 2007.

⁴ *Prosecutor v. Augustin Ndingiriyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye, Innocent Sagahutu*, Case No. ICTR-2000-56-T, Decision on the Prosecution Request for Reconsideration of the Chamber's Decision of 15 September 2006 Concerning the Testimony of Witness Romeo Dallaire by Video-Link (TC), 20 October 2006, para. 7; See also: *Prosecutor v. Elie Ndayambaje, Joseph Kanyabashi, Pauline Nyiramasuhuko, Arsene Shalom Ntahobali, Sylvain Ntabimana, and Alphonse Nteziryayo*, Case No. ICTR-98-42-T, Decision on Ndayambaje's Motion for Reconsideration of the Chamber's Decision to Deny Certification to Appeal its Decision on the Motion for Exclusion of Evidence (TC), 2 November 2006, para. 6; *Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Ntabakuze Motion for Reconsideration of Denial of Issuance of Subpoena to a United Nations Official, 12 December 2006, para. 2.

others will need security escorts to come to Arusha.⁵ For these reasons, the Defence requests that the Chamber reconsider the Scheduling Order of 16 February 2007, so as to enable the Defence to organize and accommodate their witnesses.

5. The Defence for Bizimungu, supported by Nzuwonemeye's Defence, also urges the Chamber to reconsider the date of commencement of its case because otherwise the rights of the Accused to adequate time and facilities to prepare his case will be violated. In support of this argument, Bizimungu's Defence states that its missions to meet with potential witnesses are not yet complete. It also requests that it be allowed to present its case in two sessions with a break of four months in the middle. Nzumonemeye supports the request to delay the start of the defence cases and the submission of the pre-Defence brief since he was recently assigned a new co-counsel who is yet to arrive in Arusha or to meet with the Accused. The Defence adds that he will not be presenting his own case until the end of the year.

6. Although the information presented by Bizimungu is new to the Chamber since the time it rendered the Scheduling Order, the Chamber finds that the Defence should have been conducting investigations and lining up witnesses from the beginning of the case or at least since the close of the Prosecution case, and not only following the Chamber's Scheduling Order. To seek a postponement at this stage of the proceedings because of the difficulties they are experiencing in bringing witnesses to Arusha, shows poor defence preparation and organization. The Chamber further notes that the Witness and Victims Support Section (WVSS) is a specialized section at the Tribunal which deals exclusively with concerns regarding witnesses. Once that avenue is exhausted, a party is at liberty to make an appropriate request to the Chamber to secure the presence of a witness, either in person or by video-link. The Chamber finds, therefore, that these facts do not provide a good basis to reconsider the Scheduling Order.

7. The Chamber reiterates that by the time the defence case is to start, it will have been over four months since the Prosecution closed its case. Furthermore, the Chamber recalls that when Lead Counsel was assigned to this case, he requested and was granted at least two months to familiarise himself with the dossier. In addition, the Chamber notes all the adjournments granted in this case which started on 20 September 2004. Under the circumstances, the Chamber finds that Bizimungu's Defence has had sufficient time to plan its missions and prepare to defend the case against General Bizimungu.

8. The Chamber is, however, mindful of the particular challenges raised by the Defence for Bizimungu, in particular that they have not had final meetings with all of the witnesses prior to their arrival in Arusha. As such, the Chamber will grant an extension of time so as to allow the Defence for Bizimungu to file an initial list of fifteen (15) witnesses scheduled to testify from the beginning of next session together with the summaries of facts on which they will testify not later than 15 March 2007; the list of all remaining witnesses and their summaries should be filed by 16 April 2007.

9. The Chamber considers that Bizimungu's request to present its case in two trial sessions is premature at this stage.

10. The Defence for Sagahutu and Nzumonemeye oppose any alteration to the order of the presentation of Defence cases as stated in the Scheduling Order. The Chamber notes that

⁵ Motion for Reconsideration, para. 48.



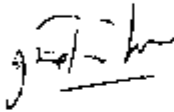
no good reason has been put forward justifying a revision of the order of presentation of the defence cases contained in the 16 February 2007 Scheduling Order.

FOR THE ABOVE REASONS, THE CHAMBER HEREBY

GRANTS the Defence Motion in part by allowing the Defence for Bizimungu to file the list of its first fifteen (15) witnesses by 15 March 2007, and the remainder by 16 April 2007;

DENIES the Motion in all other respects.

Arus: a. 13 March 2007, done in English.



A soka de Silva

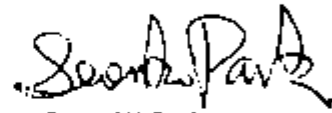
Presiding Judge



Taghrid Hikmet

Judge

[Seal of the Tribunal]



Seon Ki Park

Judge



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COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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

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Case Name:	The Prosecutor vs. A. Ndindiliyimana et al.			Case Number: ICTR-00-66-T
Dates:	Transmitted: 13 March 2007		Document's date: 13 March 2007	
No. of Pages:	4		Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
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Translation	in	<input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda

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<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: