

ICTR-01-73-T

28-03-2007

(6540-6538)

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UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

Before: Judge Inés Mónica Weinberg de Roca, Presiding
Judge Khalida Rachid Khan
Judge Lee Gacuga Muthoga

Registrar: Adama Dieng

Date: 28 March 2007

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

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**DECISION ON THE DEFENCE MOTION TO VARY THE DEFENCE WITNESS
LIST**

Office of the Prosecutor:

Wallace Kapaya
Charity Kagwi-Ndungu
Silver Ntukamazina
Gina Butler
Iskandar Ismail
Jane Mukangira

Defence Counsel:

John Philpot
Peter Zaduk

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Introduction

1. On 6 March 2007, the Defence filed a document entitled "Témoign Additionnelles Confidentielles" containing the pseudonyms and names of two witnesses who are not part of the existing Defence witness list. On the same day, the Chamber directed the Defence to file a motion pursuant to Rule 73ter. On 7 March 2007, the Defence filed the application which is the subject of the present Decision.¹ The Prosecutor did not respond.

Submissions and Discussion

2. Rule 73 ter (E) governs amendments to a defence witness list, which provides that the Defence, "if it considers, it to be in the interests of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called."
3. According to the jurisprudence of this Tribunal, Trial Chambers have allowed either party to vary its witness list upon a showing of good cause and where the requested variance is in the interests of justice.² Relevant factors include the materiality and probative value of the testimony in relation to existing witnesses and allegations in the Indictment; the complexity of the case; prejudice to the opposing party; justifications for the late addition of witnesses; and delays in the proceedings.³
4. In the present application, the Defence moves for witnesses RDP171 and BAC2 to be added to its list of witnesses, and provides a brief summary of their respective proposed testimonies.
5. RDP171 is being called to testify on allegations that the Accused ordered the killing of the Rambura priests. This allegation has been ruled inadmissible against the Accused by a prior Decision of the Chamber.⁴
6. Nonetheless, some testimony relevant to this issue was heard during the course of the Prosecution case through witness Michel Bagaragaza. Although the Defence objected to this part of the Mr. Bagaragaza's testimony, the Chamber overruled the objection so as not to interrupt the flow of the witness' testimony. The Chamber also stated on more than one occasion that when it comes to deliberate on the evidence at judgement stage nothing will be considered which has been excluded by a prior Decision of this or the pre-trial Chamber.⁵
7. The Chamber has serious misgivings as to the purpose for which witness RDP171 is being called to testify, as on the basis of the summary provided by the Defence there seems little that would not be repetitive of other witnesses or, indeed, relevant to the guilt or innocence of the Accused.

¹ "Motion to Vary the Defence Witness List", 7 March 2007 (the "Motion")

² *Prosecutor v. Karemera et al.*, Decision on Prosecutor's Motion to Vary its Witness List (TC), 2 October 2006, para. 3; *Prosecutor v. Musema*, Decision on the Prosecutor's Request for Leave to Call Six New Witnesses (TC), 20 April 1999, paras. 4, 13; *Prosecutor v. Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 bis(I) (TC), 26 June 2003, para. 13.

³ *Prosecutor v. Bagosora et al.*, Decision On Bagosora Motion To Present Additional Witnesses And Vary Its Witness List, 17 November 2006, para. 2; *Prosecutor v. Mpambura*, Decision on the Prosecution's Request to Add Witness AHY (TC), 27 September 2005, para. 4.

⁴ See Decision on the Defence Urgent Motion to Exclude Some Parts of the Prosecution Pre-Trial Brief, 30 September 2005.

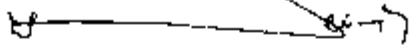
⁵ T. 28 November 2006, pp.4,5; 30-33.


8. With regards to witness BAC2, at the time of the filing of the instant Motion the Defence had not yet met with the witness. Nor has this witness yet testified in *Prosecutor v. Renzaho*. As the Defence wishes to have his future testimony in that case admitted in the current proceedings under Rule 92 *bis* of the Rules, the application at this stage is obviously being made without any definitive knowledge as to the scope or content of the witness's testimony. The Motion in respect of this witness attests to the fact that the Defence knows little about this witness or his impending testimony other than that which was discovered from "an interview with a third party." It seems somewhat curious that the Defence would file a Motion seeking to vary its witness list to include a witness it has not even met, let alone sought agreement to testify from. On the basis of the submissions of the Defence and the circumstances surrounding the request, the Chamber considers the application to be ill-conceived in respect of substance and timing.


FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 28 March 2007


Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lee Gacuga Muhoga
Judge

[Seal of the Tribunal]





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber Shamila Unnikrishnan (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other (names)
Case Name:	The Prosecutor vs. Protais Zigiranyirazo			Case Number: ICTR-2001-73-T
Dates:	Transmitted: 28 March 2007		Document's date: 28 March 2007	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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TRIM Document Type:	<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities			

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