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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1985
2/11/07

ICTR-2001-63-T
S-4-2007
(1985-1982)

Or: ENG

TRIAL CHAMBER III

Before: Judge Dennis C. M. Byron, Presiding
sitting pursuant to Rule 73(A) of the Rules

Registrar: Adama Dieng

Date: 5 April 2007

THE PROSECUTOR

v.

Siméon NCHAMHIGO

Case No. ICTR-2001-63-T

2007 APR -5 P 5:11
A/S
10/04/2007

DECISION ON DEFENCE COMPLIANCE WITH RULE 67 OF THE RULES

Rules 46(A) and 67 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van, Senior Trial Attorney
Madeleine Schwarz, Trial Attorney
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Adama Niane, Trial Attorney
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Defence Counsel:

Denis Turcotte, Lead Counsel
Benoît Henry, Co-Counsel
Yann Evima Vouma, Legal Assistant

1984

INTRODUCTION

1. The trial in this case began on 25 September 2006. Twenty-four Prosecution witnesses were heard by the Chamber over two trial sessions.¹ The Prosecution closed its case on 29 January 2007.

2. On 19 October 2006, the Chamber requested submissions from the Defence on whether its statements in open Court about its intent to enter a defence of alibi complied with Rule 67 (A) ii).² On 25 October 2006, the Chamber issued a Scheduling Order instructing the Defence to file its written submission on its compliance with Rule 67 of the Rules by Friday, 3 November 2006, and the Prosecution to file any response by Wednesday, 8 November 2006.³

3. On 3 November 2006, the Defence filed its written submission.⁴ The Prosecution filed its response on 7 November 2006.⁵

DISCUSSION

4. The Defence gives notice to the Prosecutor of its intent to enter a defence of alibi. It states that it is not yet able to furnish the elements required by Rule 67(A)(ii)(a) of the Rules and promises to use its best efforts to provide the information in due time. The Defence relies on the *Celibici* case⁶ to challenge whether entering an alibi is a defence as such, and contends that while the Trial Chamber is entitled to take into account failure to provide notice of the alibi when weighing the credibility of the alibi testimony,⁷ the Accused cannot be deprived of his right to enter a defence of alibi even if he did not comply with the Rule.

5. The Chamber recalls that Rule 67(A) provides for the reciprocal disclosure of evidence and prescribes that as early as reasonably practicable and in any event prior to the commencement of the trial, the Prosecution shall notify the Defence of the names of the witnesses that it intends to call to establish the guilt of the accused and in rebuttal of any defence plea of which the Prosecution has received notice in accordance with the Rules and the Defence shall notify the Prosecutor of its intent to enter the defence of alibi and any special defence.

6. Rule 67 (A)(ii)(a) requires that the Defence notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi. Rule 67(B) goes on to specify that the failure of the Defence to provide such notice under this Rule shall not limit the right of the accused to rely on this defence.

7. Rule 67 implies that the obligation is triggered as soon as practicable after the accused becomes aware of the nature and cause of the charges against him or her and intends to show

¹ The first trial session was held from 25 September 2006 to 29 October 2006. The second trial session started on 9 January 2007 and concluded on 29 January 2007. Twenty-four (24) witnesses were heard over a period of 32 trial days.

² T. 19 October 2006, p. 30.

³ *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-2001-63-T, Scheduling Order (TC), 25 October 2006, para. 2 i).

⁴ "Soumissions écrites de la défense conformément à l'article 67 du RPP en marge de l'ordonnance rendue par la Chambre le 25 octobre 2006, filed on 3 November 2006 ("Defence Submissions").

⁵ "Réponse du procureur aux "Soumissions écrites de la défense conformément à l'article 67 du RPP", filed on 7 November 2006.

⁶ *Prosecutor v. Delalic et al.*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001, para. 581.

⁷ *Prosecutor v. Alfred Musema*, Case No. ICTR-96-13-A, Judgement (TC), 27 January 2000, para. 107.

that by reason of his presence at a particular place or places at a particular time or times he or she was unlikely to have been at a place where the offence is alleged to have been committed at the time of its alleged commission and that after notice of the alibi, the Prosecution is entitled to find and call witnesses to rebut the alibi.⁸

8. Rule 67 does not imply that there is an obligation to enter a defence of alibi. This would be inconsistent with the presumption of innocence and the right of an accused to remain silent. In the present case, the Defence expressly disclosed its intent to enter a defence of alibi. This implies that the accused claims to be present at a specific place or specific places at the time of alleged crimes. At minimum, this information is required to be included in the notification of a defence of alibi. The other elements of the Rule simply require the defence to provide information about the witnesses or other evidence that will be adduced in support of the alibi. If the position is that there is no such supporting evidence at this time, it could be easily stated. This does not prejudice further investigation as the Rules provide for amendments to the witness list in appropriate cases. In these circumstances, the explanation that the defence is not in a position to provide even the most basic elements of the notice of alibi cannot be accurate and is not accepted.

9. When the Defence communicated its intent to rely on a defence of alibi without communicating any other information, it demonstrably breached Rule 67. In this regard, the Chamber seeks additional information as to the circumstances of this breach, with a view to assisting the Chamber in ascertaining whether the imposition of sanctions is warranted under Rule 46(A).

10. The Chamber considers that compliance with this Rule 67(A)(ii) allows the Prosecution to adduce rebuttal evidence during its case thereby reducing the likelihood of its having to lead rebuttal evidence after the close of the defence case.⁹ Therefore, compliance with Rule 67 reduces delays, contributes to the fairness of the trial and supports the proper administration of justice.¹⁰

FOR THE ABOVE REASONS, THE CHAMBER

- I. **DECLARES** that the Defence has failed to comply with the requirement of Rule 67(A)(ii).
- II. **ORDERS** the Defence to comply with the requirements of Rule 67(A)(ii) forthwith.
- III. **INSTRUCTS** the Defence to provide information as to the circumstances of the failure to comply with Rule 67(A)(ii).

⁸ *Prosecutor v. Édouard Karemera et al.*, case No. ICTR-98-44-T, Decision on Prosecutor's Motion for an Order to File Notice of Alibi (TC), 22 March 2007, para. 13.

⁹ *Prosecutor v. Édouard Karemera et al.*, case No. ICTR-98-44-T, Decision on Prosecutor's Motion for an Order to File Notice of Alibi (TC), 22 March 2007, para. 13.

¹⁰ *Prosecutor v. Rutaganda*, Case No. ICTR-93-A, Judgement (AC), 12 May 2003, para. 241; *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, Decision on Prosecution Motion for Notice of Alibi and

Arusha, 5 April 2007, done in English.



Dennis C. M. Byron
Presiding Judge

[Seal of the Tribunal]



Arusha, 5 April 2007, done in English.



Dennis C. M. Byron
Presiding Judge

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Case Name:	The Prosecutor vs. Edouard Karemera et al.		Case Number: ICTR-98-44-T	
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No. of Pages:	5		Original Language: <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
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criterion of relevance in circumstances where witnesses have already been testified is related not only to requests for state cooperation, but also to other types of requests for the production of documents. This issue therefore constitutes a crucial matter of procedure and evidence, certification of which is appropriate.¹³

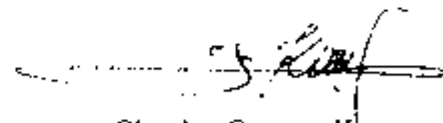
FOR THOSE REASONS, THE CHAMBER GRANTS the Defence Motion.

Arusha, 4 April 2007, done in English.



Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge

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¹³ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004; *Nyiramasuhuko et al.*, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBY Inadmissible (TC), 18 March 2004, para. 15; *Bagosara et al.*, Decision on Prosecution Request for Certification of Appeal on Admission of Testimony of Witness DBY (TC), 2 October 2003, para. 4; *Bagosara et al.*, Certification of Appeal on Admission of Testimony of Witness DP Concerning Pre-1994 Events (TC), 11 March 2003, para. 4.



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Simeon NCHAMIHIGO

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C. Denis, Co-ordinator (Karamera et al. & Rwamakuba)
H. Gogo, Co-ordinator (Seromba)
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Senior Trial Attorney in charge of case: A. Van
DEFENSE
Accused / Accusé: S. Nchamihigo
Lead Counsel / Conseil Principal: D. Turcotte
In / à Arusha Arusha
Co-Counsel / Conseil Adjoint: B. HENRY
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