

ICTR-01-73-T
13-04-2007
(6634-6631)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

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

Registrar: Adama Dieng

Date: 13 April 2007

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

JUDICIAL OFFICE
ICTR

2007 APR 13 P 12:48

Adama Dieng

**DECISION ON THE DEFENCE MOTION TO VARY THE DEFENCE WITNESS
LIST TO ADD M. GASPARD MUSABYIMANA**

Office of the Prosecutor:

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

Defence Counsel:

John Philpot
Peter Zaduk

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INTRODUCTION

1. On 23 March 2007, after a *voir dire* on the matter, the Chamber determined that Gaspard Musabyimana was not qualified to testify as an expert witness regarding informal power networks and the *Akazu*.¹ On 26 March 2007, the Defence moved the Chamber for permission to vary its witness list to add Mr. Musabyimana as a fact witness.² The Prosecution filed a response opposing the Motion on 30 March 2007,³ and the Defence replied on 2 April 2007.⁴

DISCUSSION

2. Rule 73 *ter* (E) of the Rules of Procedure and Evidence allows the Defence to move the Trial Chamber to vary its witness list “if it considers it to be in the interests of justice”. 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.⁵ 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.⁶

3. The Defence seeks to call Mr. Musabyimana to testify that there was no known intervention by *Akazu* members during the following periods:

- 1981-1985 when he was a civil servant in the Department of Immigration and Emigration;
- 1985-1989 when he was the Director of Immigration and Emigration services;
- 1989-1991 when he was the Director of Personnel in the Central Information Services; and
- 1992-1994 when he was Chief of Staff at the Ministry of Health.

4. Mr. Musabyimana’s proposed testimony also includes commentary on “other forms of intervention” as well as an explanation of how he possessed such knowledge;

¹ T. 23 March 2007, p. 39.

² “Motion to Vary the Defence Witness List re M. Gaspard Musabyimana”, 26 March 2007 (the “Motion”).

³ “Prosecutor’s Response to the Defence Motion to Vary the Witness List re Gaspard Musabyimana”, 30 March 2007.

⁴ “Reply to Prosecutor’s Response Motion to Vary the Defence Witness List re M Gaspard Musabyimana”, 2 April 2007.

⁵ Decision on the Defence Motion to Vary the Defence Witness List, 28 March 2007, para. 3 (citing *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* (E) (TC), 26 June 2003, para. 13).

⁶ *Id.* (citing *Prosecutor v. Bagosora et al.*, Decision on Bagosora Motion to Present Additional Witnesses and Vary its Witness List (TC), 17 November 2006, para. 2; *Prosecutor v. Mpumbara*, Decision on the Prosecution’s Request to Add Witness AHY (TC), 27 September 2005, para. 4).

the Defence submits that the *voir dire* should give an indication of his knowledge in this regard. According to the Defence, this testimony is necessary to rebut allegations by Prosecution witness Michel Bagaragaza, Alison Des Forges, and unspecified others.

5. The Prosecution submits that the proposed testimony is "extremely vague and void of clear meaning", and insists that the Defence provide a proper will say. In addition, the Prosecution submits that the probative value of Mr. Musabyimana's testimony is "minimal" and his proposed evidence is "factually repetitive". The Defence replies that its proposed evidence is specific and not repetitive.

6. Mr. Musabyimana's proposed testimony regarding his experience as a civil servant is responsive to allegations made by prior Prosecution witnesses.

7. The next Defence session, which is necessary for the Defence to complete the presentation of its case, has been set for later this calendar year. The proposed testimony of Mr. Musabyimana should fit within the previously allotted time for the next Defence session. As such, Mr. Musabyimana's testimony will not delay the proceedings.

8. In addition, the Prosecution will not be prejudiced by the addition of Mr. Musabyimana as a fact witness. The Prosecution had prepared to cross-examine Mr. Musabyimana as an expert witness, and successfully challenged his qualifications as an expert during *voir dire*.

9. The delay will also give the Defence time to provide the Prosecution with a will say covering Mr. Musabyimana's proposed factual testimony in greater detail than contained in the Motion. In doing so, the Defence must remain cognizant that Mr. Musabyimana is not an expert witness, and therefore his testimony should be limited to his personal experience at the Department of Immigration and Emigration, the Central Information Services, and the Ministry of Health.

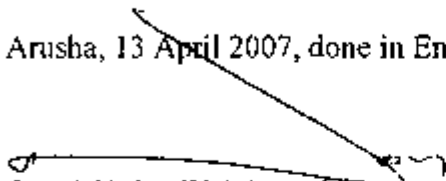
FOR THE FOREGOING REASONS, THE CHAMBER


GRANTS the Motion;

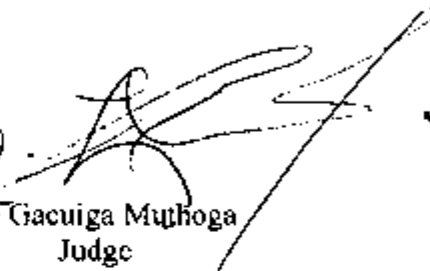
ORDERS the Defence to file its revised witness list including Mr. Musabyimana 7 days from the date of this Decision;

ORDERS the Defence to file as soon as possible, and no later than 60 days before the commencement of the next session, a will say statement outlining the substance of Mr. Musabyimana's proposed testimony.

Arusha, 13 April 2007, done in English.


Inés Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lee Gacuiiga Muthoga
Judge

[Seal of the Tribunal]





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Date: 13 April 2007

Case Name / Affaire: The Prosecutor vs.

Protais ZIGIRANYIRAZO

Case No / Affaire No.: ICTR-01-73-T

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Cc: A. Dieng, A. Miller, OLA, NY, Deputy Registrar, S. Menon, M. Niang, S. van Driessche, WVSS, ICTR Spokesperson, E. O'Donnell, DCDMS, P. Enow

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