



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-01-70-T
30-04-2007
(3091-3089)

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 30 April 2007

JUDICIAL RECORDS ARCHIVES
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2007 APR 30 1P 5:23

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

DECISION ON DEFENCE MOTION TO RECALL PROSECUTION WITNESS BLP

Office of the Prosecutor:

Mr William T. Egbé
Mr Sulaiman Khan
Mrs Veronic Wright
Mr Patrick Gabaacke
Mr Disengi Mugeyo
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé

3090

INTRODUCTION

1. Prosecution Witness BLP was the first witness to testify in the trial against the Accused which started on 15 November 2006. On 8 March 2007, the Defence filed a Confidential Motion to Recall Witness BLP on the basis that new material relating to this witness had been discovered, or, in the alternative, to amend Trial Chamber III's Decision on protective measures dated 24 October 2002 with respect to this witness and allow the Defence to contact the witness.¹ On 16 March 2007, the Chamber, following the Prosecution's request, granted the Prosecution until 5 April 2007 to investigate and respond to the allegations in the Motion. The Prosecution filed a timely Response.²

DELIBERATIONS

2. The Defence requests that the Chamber recall Prosecution Witness BLP so that he can be questioned on the contents of a letter he sent to the Defence dated 8 February 2007 in which he admits to having given false testimony to the Chamber. In the alternative, the Defence requests that the Chamber lift the protective measures bestowed upon Witness BLP so that it can meet with him and potentially call him as a defence witness.

3. The Prosecution does not object to Prosecution Witness BLP being recalled to be questioned concerning the Defence's contact with the witness, which it believes contravened the existing Order for Protective Measures, although it doesn't address the issue of recall relating to false testimony.³ Following its own investigations, the Prosecution determined that the allegations made by Witness BLP in his letter of 8 February 2007 are unfounded. Consequently, it asks the Chamber, in the interests of justice to conduct further investigations in this matter.

4. The Defence's request is not simply to recall Witness BLP for the purposes of additional cross-examination, but it is for the Chamber to hear evidence from Witness BLP recanting his prior testimony and making allegations against other witnesses, the Prosecution, and other Tribunal staff. This is understood in the Defence's assertion that he gave false testimony and that several other witnesses and persons in and outside the Tribunal were complicit in his actions. Also included in the Prosecution's submission are serious allegations of violations of protective measures which have been conferred upon Witness BLP.

5. Rule 98 of the Rules of Procedure and Evidence ("Rules") gives the Chamber the power to "*proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance."⁴

6. The Prosecution in this case does not deny that Witness BLP wrote the letter recanting his testimony, nor does it oppose the further questioning of the witness concerning his contact with the Defence. For those reasons, and considering the seriousness of retracting sworn testimony and the allegations contained in Witness BLP's letter as well as the Chamber's concern regarding the alleged violations of protective measures, the Chamber wishes to have more information in order to fully evaluate the witness' credibility. Therefore, the Chamber will call Prosecution Witness BLP as well as the Defence investigator, Mr. Nshogoza, with

¹ Requête ex parte en extrême urgence et confidentielle aux fins de rappeler el témoin du Procureur BLP aux fins d'être réentendu au vu des éléments nouveaux, filed on 8 March 2007.

² The Prosecution's Response to the Defence Motion to Recall Witness BLP, filed on 3 April 2007.

³ Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses, 24 October 2002.

⁴ This authority was used in the *Bagilshema* case where the Trial Chamber ordered that confessions of witnesses be produced by the Prosecution as they may be material in evaluating the witness' credibility. See *Prosecutor v. Ignace Bagilshema*, Case No. 95-1A-T, Decision on the Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witness Y, Z, and AA (TC), 8 June 2000, para 10.

3089

whom the witness allegedly made contact. The Chamber will commence the procedure with its own questions to the witnesses and then allow both parties to conduct cross-examination.

7. Rule 85 of the Rules provides for the order of presentation of evidence and requires that any evidence ordered by the Trial Chamber pursuant to Rule 98 be presented following the close of both the Prosecution and Defence cases. However, the rights of the accused, and the interests of justice would be better served by altering this normal course and allowing the Defence to have the benefit of the additional evidence before presenting its case.

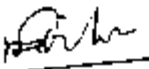
THE CHAMBER THEREFORE

DENIES the Defence Motion;

ORDERS *proprio motu* that Prosecution Witness BLP be called as a witness of the Trial Chamber to appear on 15 June 2007; and

ORDERS that following the hearing of Witness BLP, the Chamber will hear Mr. Nshogoza, the Defence investigator, on the circumstances surrounding his meetings with Witness BLP.

Arusha, 30 April 2007, done in English.


Asoka de Silva
Presiding Judge


Tagnrid Hikmet
Judge


Seon Ki Park
Judge





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)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Homelowo	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
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From:	<input checked="" type="checkbox"/> Chamber J. Greenspoon <small>(names)</small>	<input type="checkbox"/> Defence <small>(names)</small>	<input type="checkbox"/> Prosecutor's Office <small>(names)</small>	<input type="checkbox"/> Other: <small>(names)</small>
Case Name:	The Prosecutor vs. Emmanuel RUKUNDO			Case Number: ICTR-01-70-T
Dates:	Transmitted: 30 April 2007		Document's date: 30 April 2007	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	DECISION ON DEFENCE MOTION TO RECALL PROSECUTION WITNESS BLPP			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
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			<input type="checkbox"/> Accused particulars	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

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Reference material is provided in annex to facilitate translation.

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