



ICTR-98-42-T
11-06-2007
(12149-12145)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

12149
PM

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 11 June 2007

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO *et al.*,

Joint Case No. ICTR-98-42-T

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**DECISION ON NTAHOBALI'S MOTION FOR RECONSIDERATION OF THE
DECISION OF 2 MARCH 2006**

Office of the Prosecutor

Ms. Silvana Arbia
Ms. Adelaide Whet
Ms. Holo Makwaia
Ms. Althea Alexis Windsor
Ms. Madeleine Schwarz
Ms. Astou Mbow, *Case Manager*
Ms. Tolulope Olowoye, *Case Manager*

Defence Counsel for Ntahobali

Mr. Normand Marquis
Mr. Louis Huot

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy B. Bossa (the "Chamber");

BEING SEIZED of the confidential "*Requête d'Arsène Ntahobali en reconsidération de la décision du 2 mars 2006 pour faire témoigner NMBMP par voie de vidéoconférence (Art. 73 A), 71 (D) et 71 (A) du Règlement de procédure et de preuve*", filed on 8 May 2007 (the "Motion");

CONSIDERING:

i) The "Prosecutor's Response to the '*Requête d'Arsène Ntahobali en reconsidération de la décision du 2 mars 2006 pour faire témoigner NMBMP par voie de vidéoconférence*'", filed on 10 May 2007 (the "Prosecution's Response");

ii) The "*Réplique à la réponse du Procureur intitulée 'Prosecutor's Response to the Requête d'Arsène Ntahobali en reconsidération de la décision du 2 mars 2006 pour faire témoigner NMBMP par voie de vidéoconférence'*", filed on 14 May 2007 ("Ntahobali's Reply");

iii) The "Submission by the Registrar Under Rule 33 (B) with Respect to the '*Requête d'Arsène Ntahobali en reconsidération de la décision du 12 mars 2006 pour faire témoigner NMBMP par voie de vidéoconférence*' and to the 'Prosecutor's Response' to the said requête, Respectively Filed by the Defence on 8 May and 10 May 2007", filed on 15 May 2007 (the "Registry's Submission");

iv) The "Registry's Interoffice Memorandum reference ICTR/DR/05/07/44", filed on 23 May 2007;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the Motion, pursuant to Rule 73 of the Rules, on the basis of the written submissions of the Parties.

INTRODUCTION

1. On 2 March 2006, the Chamber denied Ntahobali's Motion for Witness NMBMP to testify by means of video-conference from the United States despite the importance of her expected testimony on the grounds that both her alleged inability and unwillingness to come to testify in Arusha were not supported by any good reason (the "Impugned Decision").¹

¹ *Prosecutor v. Nyiramasuhuko et al.*, "Decision on Arsène Shalom Ntahobali's Extremely Urgent- Strictly Confidential- Under Seal- Motion to Have Witness NMBMP Testify Via Video-Link", 2 March 2006.

SUBMISSIONS OF THE PARTIES

The Defence

2. The Defence moves the Chamber to reconsider the Impugned Decision and allow Witness NMBMP to testify by means of a video-conference from the United States, where she currently resides.
3. The Defence submits that WVSS has made efforts to have Witness NMBMP testify in Arusha, but the American authorities did not allow her to leave the territory as her request for asylum in the United States is still pending.
4. The Defence alleges that Witness NMBMP's appearance before the American immigration judge had been adjourned until the end of June 2007 and that the related decision could not be rendered by September 2007. The Defence adds that if Witness NMBMP's case is denied, she still has a right to appeal, which may take up to three years to be determined.
5. The Defence submits that Witness NMBMP is therefore unable to leave the American territory for a long period of time to testify before the Chamber.

The Prosecution

6. The Prosecution submits that according to the e-mail allegedly from Witness NMBMP's American immigration lawyer, NMBMP could travel to Arusha if supplied with a *bona fide* travel document. The Prosecution further submits that the Defence has failed to demonstrate that no one, including WVSS, is in a position to provide Witness NMBMP with this document.

The Defence Reply

7. The Defence submits that only the American authorities are able to provide Witness NMBMP with a valid travel document. The Defence further alleges that Witness NMBMP has already attempted to travel to Arusha. This was not possible despite arrangements jointly made by WVSS, the representative of the American Government and Witness NMBMP's American immigration lawyer because she was not in possession of a travel document recognized by the American Immigration authorities.

The Registry

8. The Registry submits that according to the American authorities, Witness NMBMP's immigration case had been adjourned until 20 June 2007 and that she could not travel before then. In any event, her ability to do so also depends on the status of her children living in another country.



DELIBERATIONS

9. The Chamber recalls its jurisprudence on reconsideration:

[A]lthough the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances.²

10. The Chamber notes that it has the inherent jurisdiction, to be exercised at its discretion, to reconsider an impugned decision, including but not limited to the following circumstances:

- i. Where the impugned decision was erroneous in law or constitutes an abuse of discretion and for this reason a procedural irregularity has caused a failure of natural justice; or,
- ii. Where new material circumstances have arisen since the decision was issued.³

11. The Chamber specifically notes that Witness NMBMP is unlikely to be able to travel to Arusha to testify in the foreseeable future because of her failure to have a valid travel document. This specific information about her inability to travel for an undetermined period of time because of her current immigration status was not available at the time of the Impugned Decision. In light of the prevailing circumstances and bearing in mind the importance of Witness NMBMP's testimony to Ntahobali's case and the necessity to put the proceedings to an end, the Chamber finds that "particular circumstance" exists in this case justifying reconsideration of the Impugned Decision by allowing Witness NMBMP to testify via video-link from the United States.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion;

ORDERS that Witness NMBMP's testimony shall be heard via video-link from the United States where she currently resides;

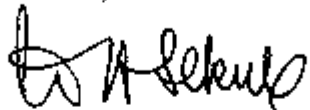
ORDERS the Registry to take all administrative and other steps necessary for the implementation of this Decision;

DIRECTS the Defence to diligently assist the Registry in the necessary arrangements.

² *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Ex-Parte-Extremely Urgent Motion for Reconsideration of Trial Chamber II's Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte-Under Seal-Motion for Additional Protective Measures for Defence Witness WBNM, dated 17 June 2005 or, Subsidiarily, on Nyiramasuhuko's Strictly Confidential Ex-Parte-Under Seal-Motion for Additional Protective Measures for Defence Witness WBNM (TC), 4 July 2005, para. 3, quoting *Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis (E)" (TC), 15 June 2004, para. 7.

³ *Barayagwiza*, Decision (Prosecutor's Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, paras. 4-5; *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11; *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003, para. 25.

Arusha, 11 June 2007

William H. Sekule
Presiding Judge

Arlette Ramaroson



[Seal of the Tribunal]

Solomy Balungi Bossa
Judge