



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-01-70-T
04-07-2007
(3174-3170)

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 4 July 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

JUDICIAL SECTION - SARONWE
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**DECISION ON THE MOTIONS RELATING TO THE SCHEDULED
APPEARANCES OF WITNESS BLP AND THE DEFENCE INVESTIGATOR**

Office of the Prosecutor:

Mr William T. Egbe
Mr Sulaiman Khan
Ms Veronic Wright
Mr Patrick Gabaake
Ms Thembile Segoete
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé
Ms Allison Turner

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INTRODUCTION

1. The trial against Emmanuel Rukundo commenced on 15 November 2006. The Prosecution closed its case on 12 March 2007. On 7 May 2007, the Chamber ordered the Defence to begin its case on 2 July 2007.¹
2. On 8 March 2007, the Defence filed a Confidential Motion requesting the recall of Prosecution Witness BLP. The Defence claimed to be in possession of information suggesting that the Witness intended to recant his prior testimony before the Chamber. The Defence attached to its Motion a document dated 8 February 2007.² On 30 April 2007, the Chamber denied the Defence request to recall Prosecution Witness BLP and ordered, *proprio motu*, that BLP be called as a witness of the Chamber. The Chamber further ordered the Defence investigator, Mr. Léonidas Nshogoza, to appear before the Chamber to explain the circumstances of his alleged meetings with Witness BLP.³
3. On 27 June 2007, the Chamber, after receiving information that Mr. Nshogoza had recently been arrested and detained in Rwanda, ordered his temporary transfer to the Tribunal under Rule 90bis of the Rules of Procedure and Evidence (the "Rules") so that his testimony before the Chamber could proceed as planned.⁴
4. On 29 June 2007, the Defence filed five Motions relating to Mr. Nshogoza's detention and the scheduled appearances before the Chamber of both Witness BLP and Mr. Nshogoza. The Defence requests the unconditional release of Mr. Nshogoza by the Rwandan authorities or his transfer to the ICTR,⁵ the concomitant hearing of Mr. Nshogoza and Witness BLP and the disclosure of the Rwandan judicial dossiers of both Witnesses.⁶ The Defence further alleges that in the course of its investigations relating to Defence witnesses, the Prosecution violated protective measures granted to Defence witnesses. The Defence therefore requests a modification of the Chamber's Decision on Protective Measures for Defence Witnesses so as to require the Defence to effect rolling disclosure of identifying information thirty days before the date on which each witness is scheduled to testify.⁷ The Defence also requests an independent inquiry into the alleged violation of protective measures and the alleged latest retraction of Witness BLP's testimony in this case.⁸ Finally, the Defence requests a stay of the proceedings.⁹ On 2 July 2007, the Prosecution filed a Motion requesting the Chamber to order the Defence not to contact Mr. Nshogoza during his detention in Arusha.¹⁰

¹ Scheduling Order following the Pre-Defence Conference (TC), 7 May 2007.

² *Requête Ex Parte en Extrême Urgence et Confidentialle aux fins de Rappel du Témoin du Procureur BLP aux fins d'être réentendu au vu des Éléments Nouveaux*, filed on 8 March 2007.

³ Decision on Defence Motion to Recall Prosecution Witness BLP (TC), 30 April 2007.

⁴ *Proprio Motu Order for the Transfer of a Detained Witness* (TC), 27 June 2007.

⁵ *Requête Confidentialle en Extrême Urgence en Libération Inconditionnelle de l'enquêteur de la Défense M. Nshogoza ou, Subsidièrement, en Dessaisissement du Gouvernement Rwandais de L'Affaire Nshogoza au profit du TPIR*, filed on 29 June 2007.

⁶ *Requête Strictement Confidentialle en Extrême Urgence aux fins d'ordonner L'Audition Concomitante de BLP et de M. Nshogoza et d'obtenir la Communication de L'Intégralité du Dossier Judiciaire des Deux Témoins*, filed on 29 June 2007.

⁷ *Requête Strictement Confidentialle en Extrême Urgence aux fins d'ordonner au Procureur de se conformer aux Mesures de Protection des Témoins à Décharge dans La Conduite de ses Enquêtes*, filed on 29 June 2007; Decision on the Defence Motion for Protective Measures for Defence Witnesses (TC), 16 May 2007.

⁸ *Requête Strictement Confidentialle en Extrême Urgence aux fins d'ordonner la Conduite d'une Enquête Indépendante*, filed on 29 June 2007.

⁹ *Urgent and Strictly Confidential Defence Request for a Stay of Proceedings*, filed on 29 June 2007.

¹⁰ *The Prosecutor's Request for Directives as to the Evidentiary Hearing of Detained Witness Léonidas Nshogoza*, filed on 2 July 2007.

5. On 2 July 2007, after having heard extensive oral submissions by the Parties on all the Motions, including Defence arguments that Witness BLP should not appear, the Chamber ordered the appearance of Witness BLP.¹¹ Following Witness BLP's testimony in which he stood by his earlier testimony of November 2006, the Chamber indicated that the Registry would be instructed to conduct an independent investigation.¹² The Chamber also announced that a written Decision on the other issues raised by the various Motions would be rendered soon.

DELIBERATIONS

6. The Chamber notes that the Defence filed its Motions at the close of the working day on Friday, 29 June 2007, thereby not permitting full consideration of all issues by the Chamber and the Prosecution prior to the scheduled commencement of the Defence case on Monday 2 July 2007. The Chamber strongly discourages this practice and urges the Defence to be more considerate to issues of timing when filing their pleadings. Since all the Motions filed by the Parties relate to the same matters, it will serve judicial economy to address them in one Decision.

7. Regarding the Defence Motion requesting the unconditional release of Mr. Nshogoza, or in the alternative the deferral of the proceedings to the Tribunal, the Chamber finds that the Defence argument on the alleged illegal detention of Mr. Nshogoza based on the latter's functional immunity is not adequately documented.¹³ Furthermore, the Chamber is not inclined to address the issue in light of the ongoing efforts of the Registry to liaise with Rwandan authorities to amicably settle the issue.

8. In light of the Chamber's Decision to hear Witness BLP, the Chamber finds that the Defence request for a concomitant hearing of Witness BLP and Mr. Nshogoza has already been addressed. The Chamber decided to hear the Witness, and not grant the Defence request because such a request would not be consistent with Rule 90(D), which stipulates that a witness who has not yet testified, other than an expert, shall not be present when the testimony of another witness is given. The Chamber notes the Defence written and oral arguments that it requires the judicial dossiers from Rwanda of both Witness BLP and Mr. Nshogoza before the Chamber may hear these Witnesses. The late filing of the Defence Motions on the eve of Witness BLP's testimony did not allow the Chamber to effectively act on the request. The Chamber also finds that the judicial dossiers are not necessary for the limited purpose of the Chamber's independent inquiry. The Chamber recalls that after hearing Witness BLP's further testimony on 2 July 2007, it indicated it would order an investigation into the circumstances of the alleged false testimony of the Witness. Pending the outcome of the investigation to be ordered, the Chamber need not, at this stage, hear Mr. Nshogoza on the circumstances surrounding his meetings with Witness BLP.

9. With respect to the Prosecution request for the Defence not to contact Mr. Nshogoza, the Chamber sees some merit in such a request. In view of the pending investigation, it would indeed not be appropriate for the Defence to discuss with Mr. Nshogoza issues related to Witness BLP and other similar circumstances. However, to avoid difficulties in the preparation of the Defence case, the Chamber is inclined to permit the Defence to contact Mr. Nshogoza during his stay in Arusha as a detained witness, for the limited purpose of handing over information and documents in his possession regarding the substantive Defence

¹¹ Oral Decision (TC), T. 2 July 2007, p. 24 (ICS).

¹² Oral Decision (TC), T. 2 July 2007, p. 35 (ICS).

¹³ The Defence has not enclosed any supporting material, including the work programme of the mission and the documents relating to the specific charges for which Mr. Nshogoza has been detained.



case. For this reason, the Registry is directed not to return Mr. Nshogoza to Rwanda before Friday 6 July 2007. The Chamber also reminds both Parties of their obligation not to contact Witness BLP without prior approval of the Chamber.¹⁴

10. In view of the prevailing circumstances, the Chamber will grant a short adjournment to Monday, 9 July 2007 so as to help the Defence to better prepare its case. In this regard, the Chamber instructs the Registry to provide the Defence with all necessary support to avoid any disruption of the proceedings.

11. With respect to the alleged violation of protective measures, the Chamber recalls its earlier Decisions thereon¹⁵ and reminds both Parties of their obligations to respect and conform to protective orders imposed by the Chamber. The Chamber, however, does not see the need to modify its earlier Decision ordering disclosure of witness information twenty one days before the commencement of the Defence case. The current Defence complaints pertain to an alleged voluntary breach of the protection order, which would not be remedied by altering the time allotted for disclosure of witness information.

¹⁴ Oral Decision (TC), T. 2 July 2007, p. 21 (ICS).

¹⁵ Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses (TC), 24 October 2002; Decision on the Prosecutor's Motions for Variation of Witness List and Protective Measures for Witnesses BUW, CCF, CCJ and BLI (TC), 14 February 2007; Decision on the Defence Motion for Protective Measures for Defence Witnesses (TC), 16 May 2007.



FOR THE ABOVE REASONS, THE CHAMBER

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GRANTS IN PART the Defence Motion for Stay of Proceedings and **ORDERS** that the Defence case shall commence on Monday, 9 July 2007;

INSTRUCTS the Registry, in light of the temporary unavailability of the Defence investigator, to continue making necessary arrangements to assist the Defence in its preparation, including the appointment of an interim investigator;

INSTRUCTS the Registry, pursuant to Rules 91 and 54, to conduct an investigation into the alleged false testimony of Witness BLP and related issues, including the circumstances surrounding Witness BLP's meetings with the Defence investigator and the alleged violation of protective measures, and to submit a report to the Chamber within two months from the date of this Decision;

INSTRUCTS the Registry to liaise with the Rwandan authorities with a view to safeguarding the personal security of Witness BLP;

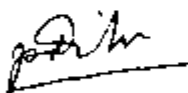
DIRECTS the Registry to facilitate the contact between the Rukundo Defence and Mr. Nshogoza for the limited purposes delineated by the Chamber in its deliberations, and not to return the latter to Rwanda before Friday 6 July 2007;

REMINDS the Parties of their obligation to conform to protective measures imposed by the Chamber;

REMINDS the Parties to not contact Witness BLP without prior approval of the Chamber;

DENIES the Motions in all other respects.

Arusha, 4 July 2007



Asoka de Silva
Presiding Judge



Taghrir Hikmet
Judge



Seon Ki Park
Judge

