



109R-97-31-7
12-07-2007
(4756-4754)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4756
S. Muzwa

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 12 July 2007

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JUDICIAL SECRETARIAT
ICTR

THE PROSECUTOR

v.

Tharcisse RENZAHO

Case No. ICTR-97-31-T

DECISION ON DEFENCE REQUEST TO AMEND WITNESS LIST

The Prosecution:
Jonathan Moses
Katya Meluish
Ignacio Tredici

The Defence:
François Cantier
Barnabé Nekuie

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Defence "Requête en modification de la liste de témoin" etc., filed on 6 July 2007;

CONSIDERING the Prosecution Response, filed on 6 July 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence requests that the Chamber allow it to amend its witness list by adding two witnesses and removing thirteen others. Specifically, the Defence proposes to add Witnesses PAT and PER, and to remove Witnesses NIB, HGG, TOP, GAZ, POT, NAH, LIP, RAP, KIC, PMS, PIN, HEC, and the proposed expert witness, Kent Roach. The two new witnesses were only recently discovered as a result of further investigations conducted following the refusal of several Defence witnesses to testify. According to the Defence, allowing the proposed witnesses' evidence is material to its case and adding them at this stage would not prejudice the Prosecution.¹

2. The Prosecution opposes only the late addition of Witness PER, stating that the basis of justification to add this witness is flawed because none of the witnesses being withdrawn were slated to cover the matters included in his testimony.²

DELIBERATIONS

3. On 17 May 2007, the Defence began presenting its case. Rule 73 *ter* (E) of the Rules of Procedure and Evidence allows the Defence to request to amend its witness list after the start of its case, "if it considers it to be in the interests of justice". In deciding such requests, the Chamber has been guided by considerations of the interests of justice and the existence of good cause. Relevant factors considered were 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.³

4. According to the Defence, Witness PER was present during the events alleged at Sainte Famille Church, and is able to provide direct testimony about the role of the Accused there. In particular, the witness will explain that the Accused came accompanied by soldiers of UNAMIR in order to protect the refugees. It is submitted that Witness PER will replace the testimony of Witnesses NAH and POT.⁴

¹ Motion, paras. 7, 26, 32.

² Response, paras. 3-5.

³ *Prosecutor v. Bagosora et al.*, Decision on Nsengiyumva Motion for Leave to Amend Its Witness List (TC), 6 June 2006, para. 3; *Bagosora et al.*, Decision on Defence Motions to Amend the Defence Witness List (TC), 17 February 2006, para. 4; *Prosecutor v. Mpambara*, Decision on the Prosecution's Request to Add Witness AHY (TC), 27 September 2005, para. 4; *Bagosora et al.*, Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 *bis* (E) (TC), 21 May 2004, para. 8; *Prosecutor v. Nahimana et al.*, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, paras. 17-20.

⁴ Motion, paras. 8-9, 18.

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5. Witness PAT was in charge of a battalion in Kigali-Ville and will testify about the military situation in Kigali. According to the Defence, he will explain the relationship between the Accused and the military forces and that it was impossible for the Accused to give orders to the army. It is submitted that his testimony would counter certain points set out in the Indictment.⁵

6. The Chamber finds that the evidence of these two witnesses could be material to the Defence case as it relates to charges in the Indictment. It relates to the Sainte Famille events and the ability to give orders that the Accused allegedly exercised, on which there is limited direct testimony for the Defence. The will-say of one of the witnesses that the Defence wishes to withdraw, Witness NAH, does state, albeit briefly, that that witness would have testified to the role that the Accused played in the Saint Famille events. Witness PER is now called to replace that testimony.

7. Adding two Defence witnesses will not cause any delay of the trial, especially given the number of witnesses that are being withdrawn. The two new witnesses will testify during the forthcoming session (22 August to 7 September 2007), which will take place more than one month from the date of this decision.

FOR THE ABOVE REASONS, THE CHAMBER

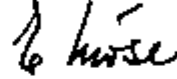
GRANTS the Defence leave to vary its witness list by adding Witnesses PAT and PER, and by removing Witnesses NIB, HGG, TOP, GAZ, POT, NAH, LIP, RAP, KIC, PMS, PIN, HEC, and the proposed expert witness, Kent Roach; and

ORDERS the Defence to disclose the identification details of Witnesses PAT and PER, as well as summaries of their anticipated testimonies, immediately upon the filing of this decision.

Arusha, 12 July 2007


Erik Mose
Presiding Judge


Sergei Alekseevich Egorov
Judge


Florence Rita Arrey
P.A. Judge

[Seal of the Tribunal]



⁵ Motion, paras. 19-20, 23.