

ICTR-2001-63-T
17-07-2007
(2099-2096)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Diong

Date: 17 July 2007

THE PROSECUTOR

v.

SIMÉON NCHAMIHIGO

Case No. ICTR-2001-63-T

2007.07.17 P. 12:51
A. C. M. Byron
17/07/07

**DECISION ON THE DEFENCE MOTION TO HEAR THE TESTIMONY OF
WITNESS RLN BY VIDEO-LINK**

Rules 54, 71, 73 and 90 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van
Lloyd Strickland
Madeleine Schwarz
Adama Niang
Marlize Keefer

Defence Counsel for Siméon Nchamihigo

Denis Turcotte
Benoît Henry
Yam Evima Vouma

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INTRODUCTION

1. The trial in this case started on 25 September 2006. The Prosecution closed its case on 29 January 2007. The first session of the Defence case took place from 23 April 2007 until 3 May 2007, during which fifteen Defence witnesses testified.

2. On 16 June 2007, the Defence filed a motion moving the Chamber to allow Witness RLN, a protected Defence witness, to testify via video-link during the next trial session to be held on 27 August 2007 for a period of approximately four weeks.¹

DISCUSSION

3. The Defence submits that Witness RLN is willing to testify, but refuses to travel to Arusha for health and security reasons. It further explains that the witness' employer will not permit the witness to leave the country where Witness RLN works. The Defence therefore requests the Chamber, under Rules 90 (A) and 71 of the Rules of Procedure and Evidence ("Rules"), to authorize the testimony of the witness to be heard by video link.

4. Rule 90 (A) of the Rules provides that "witnesses shall, in principle, be heard directly by the Chamber". However, testimony of a witness by video-link has been authorized in this Tribunal on several occasions. Trial Chambers have ordered under Rule 54 that testimony be heard by video-conference provided that it is in the interest of justice to act accordingly,² or in exceptional circumstances in accordance with Rule 71 of the Rules.³ In evaluating such a matter, the Chamber must weigh the importance of the testimony, the witness's inability or unwillingness to attend, and whether a good reason has been adduced for that inability or unwillingness.⁴

¹ *The Prosecutor v. Simón Nchamihigo*, Case No ICTR-2001-63-T, Defence Motion for Leave to Take the Deposition of Witness RLN via Video Link, filed 18 June 2007; *The Prosecutor v. Simón Nchamihigo*, Case No ICTR-2001-63-T, Scheduling Order (TC), 22 May 2007.

² *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004.

³ Rule 54 provides: "At the request of either party or *proprio motu*, Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial". Rule 71 reads: (A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer. [...] (D) The deposition may also be given by means of a video-conference. See for example, *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004; *The Prosecutor v. Édouard Keremera, Mathieu Ngirumpatswe and Joseph Nzirorera*, Case No ICTR-98-44-T, Decision on Prosecutor's Motion for Special Protective Measures for Witness ADE (TC), 3 May 2006, para. 4; *The Prosecutor v. Aloys Simba*, Decision on the Defence Request for Taking the Evidence of Witness FMPI by Deposition (TC), 9 February 2005, para. 5.

⁴ *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004, para. 6; *The Prosecutor v. Aloys Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJKI by Video-link (TC), 4 February 2005, para. 4; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4.

5. Defence Witness RLN is protected under the protective measures ordered by the Chamber on 20 March 2007.⁵ The Defence asserts that Witness RLN's precarious state of health due to its advanced age and the systematic refusal of the witness' superiors to allow the witness to travel outside the country constitute serious and exceptional reasons which justify Witness RLN testifying via video-link in Kigali, Rwanda. On 19 and 24 April 2007, the Defence informed the Prosecutor and the Chamber respectively that it intended to enter the defence of alibi pursuant to Rule 67 (A)(ii)(a) of the Rules of Procedure and Evidence "Rules".⁶ The Defence submits that Witness RLN is an important witness that will corroborate to the defence of alibi with her testimony. Witness RLN will depose, *inter alia*, as to the acts summarized in the Pre-Defence Brief of 23 March 2007⁷ and the Notice of Alibi of 19 and 24 April 2007.⁸

6. The Chamber concludes that the Defence has particularized the issues which may imperil the witness's security and health by travelling to Arusha. The Chamber also notes that the Prosecution has not filed a response to the Defence motion for Witness RLN's testimony to be heard via video-link in Kigali.

7. Having considered the totality of the circumstances, the Chamber finds that it is in the interests of justice to permit the witness to testify by video-conference.

FOR THOSE REASONS, THE CHAMBER

I. GRANTS the Motion for Witness RLN's testimony to be heard via video-link pursuant to Rule 54 of the Rules and Procedure and Evidence;

⁵ *The Prosecutor v. Siméon Nchamihigo*, Case no ICTR-2001-63-T, Decision on Defence Motion for Protection of Defence Witness (TC), 20 March 2007.


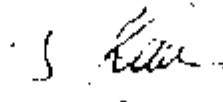
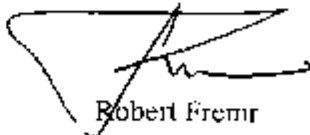
⁶ See Notice to Counsel for NCHAMIHIGO to Enter into a Defence of Alibi Pursuant to Rule 67 (A)(ii)(a) of the Rules of Procedure and Evidence, Strictly confidential, 19 April 2007; and Transmission of the Copy of the Notice to Counsel for NCHAMIHIGO to Enter into a Defence of Alibi Pursuant to Rule 67 (A)(ii)(a) of the Rules of Procedure and Evidence following the Status Conference of 23 April 2007, Strictly confidential, 24 April 2007.

⁷ Filing by the Defence of exculpatory evidence in conformity with the "Decision on Defence Motion for Extension of Time for Complying with Chamber's Scheduling Order of 5 February 2007 and Scheduling of the Presentation of the Defence Case" dated 19 March 2007 (Rule 73 *ter* of the Rules of Procedure and Evidence), 23 March 2007, pp. 5 and 6.

⁸ See Notice to Counsel for NCHAMIHIGO to Enter into a Defence of Alibi Pursuant to Rule 67 (A)(ii)(a) of the Rules of Procedure and Evidence, Strictly confidential, 19 April 2007; and Transmission of the Copy of the Notice to Counsel for NCHAMIHIGO to Enter into a Defence of Alibi Pursuant to Rule 67 (A)(ii)(a) of the Rules of Procedure and Evidence following the Status Conference of 23 April 2007, Strictly confidential, 24 April 2007.

II. REQUESTS the Registrar to assist in making the necessary arrangements for Witness RLN to testify by way of secure audio-video transmission link during the next trial session starting 27 August 2007, and that it does so in a confidential manner.

Arusha, 17 July 2007, done in English.

		
Dennis C. M. Byron	Gberdao Gustave Kam	Robert Fremr
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

