



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NO. 01/2007

ICTR-01-70-T
18-07-2007
(3229-3227)

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 18 July 2007



THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

ORDER ON DISCLOSURE OF IDENTIFYING INFORMATION OF DEFENCE
WITNESSES

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

- Mr William E. Egbu
- Mr Sulaiman Khan
- Mrs Veronic Wright
- Mr Patrick Gabaake
- Ms Thembile Segote
- Mr Disengi Mugeyo
- Ms Amina Ibrahim

Counsel for the Defence:

- Ms Aicha Condé
- Ms Allison Turner

INTRODUCTION

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1. In its Scheduling Order of 7 May 2007 and its Decision on Protective Measures for Defence Witnesses of 16 May 2007, the Chamber instructed that the identities of all Defence Witnesses be disclosed at least 21 days before the commencement of the Defence case, which was set for 2 July 2007.

2. On 8 June 2007, 24 days before the start of the session, the Defence disclosed the identifying information sheets for witnesses scheduled to testify in the upcoming trial session only. On 13 June 2007, the Defence disclosed the identification sheets of two additional witnesses planned for this trial session.

3. On 14 June 2007, the Chamber, through its coordinator, sent an e-mail to the Parties acknowledging the receipt of the identification sheets so far but reminded the Defence of its obligation to disclose all identification sheets as per the Chamber's Scheduling Order.

4. On 4 July 2007, the Chamber rendered a Decision on the Motions relating to the scheduled appearances of Witness BLP and the Defence Investigator. In this Decision, the Chamber considered a Defence request to alter the Chamber's Scheduling Order relating to disclosure of witness identification information whereby the Defence could effect rolling disclosure 30 days prior to the expected hearing of each witness. The Chamber denied the Defence request because the underlying complaint for the request was an alleged breach of the order by the Prosecution, which, in the Chamber's opinion, would not be remedied by a change in the disclosure time-line.

5. On 9 July 2007, following a stay of proceedings granted by the Chamber, and upon the start of the Defence case, the Chamber reminded the Defence of its obligation to comply with the Chamber's orders with regard to the disclosure of identifying information for its witnesses.

6. On 13 July 2007 and 16 July 2007, with a reference to the issue on 17 July 2007, the Chamber again reminded the Defence of its obligation to observe the Chamber's Orders with regard to the above disclosures.

DISCUSSION

7. Since the Chamber's Orders to disclose the identifying information of all of the Defence Witnesses 21 days prior to the start of the Defence case, the Chamber has had cause to remind the Defence to comply on at least six occasions. The Defence has indicated that it

1. Scheduling Order following the Pre-Denial Conference, 7 May 2007, under III. Decision on the Defence Motion for Protective Measures for Defence Witnesses, 16 May 2007, under III. Decision on the Motions Relating to the Scheduled Appearances of Witness BLP and the Defence Investigator, 4 July 2007, para. 11.
2. Draft T. 9 July 2007, p. 4.
3. Draft T. 13 July 2007, p. 18.
4. Draft T. 16 July 2007, p. 32.
5. Draft T. 17 July 2007, p. 15.

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will call approximately twenty-nine (29) witnesses in the next trial session⁷, but only the identities of eighteen (18) witnesses have been disclosed so far.⁸

8. The Chamber is very concerned about the Defence's continuous disregard of its Orders. The Chamber recalls that Rule 46(A) of the Rules of Procedure and Evidence provides that a Chamber may, after a warning impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings or it otherwise contravenes the interests of justice. Under these circumstances, the Chamber finds the Defence's behaviour unacceptable and issues a warning to Lead Counsel for Rukundo under Rule 46(A). Furthermore, the Chamber instructs the Defence to disclose immediately the identities of all of the witnesses listed in its Pre-Defence Brief. If the Defence wishes to alter its witness list following the start of its case, it must do so in accordance with the provisions of Rule 73ter (E).

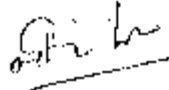
9. The Chamber further reiterates that should this conduct continue, it will consider imposing sanctions on the Defence for obstructionist behaviour under the terms of Rule 46(A).

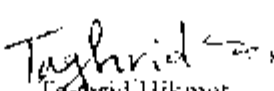
FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

ORDERS the Defence for Rukundo to provide, by 20 July 2007, the Chamber and the Prosecution with the identifying information of all the Defence witnesses listed in the Pre-Defence Brief;

ISSUES a warning to Lead Counsel for Rukundo under the provisions of Rule 46(A) of the Rules.

Arusha, 18 July 2007, done in English.


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

⁷ DRC-01-16 July 2007, p. 35

⁸ Confidential filing of the Identification Sheets of 18 Defence Witnesses, filed by the Defence for Rukundo on 16 July 2007.