



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 24 September 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

**DECISION ON THE DEFENCE'S URGENT AND CONFIDENTIAL MOTION
REQUESTING AUTHORIZATION FOR WITNESS SJD
TO TESTIFY VIA VIDEO-LINK
*Rule 54 of the Rules of Procedure and Evidence***

Office of the Prosecutor:

Mr William T. Egbe
Mr Sulaiman Khan
Mrs Veronic Wright
Mr Patrick Gabaake
Ms Thembile Seogoete
Mr Disengi Mugeyo
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé
Ms Allison Turner

INTRODUCTION

1. The Prosecution's evidence in this case closed on 12 March 2007, after hearing 18 witnesses. The Defence case started on 9 July 2007. The last session in the Defence case started on 3 September 2007 and is ongoing.

2. On 11 September 2007, the Chamber rendered a Decision on the Defence's motion to vary its witness list, permitting the addition of Witness SJD.¹ On 19 September 2007, the Defence filed the present motion requesting the Chamber to authorize Witness SJD's testimony to be heard via video-link. The Prosecution does not intend to challenge this Motion.²

DISCUSSION

3. As the Chamber already stated in its Decision of 11 September 2007 regarding video-link testimony:

“... the Chamber recalls the general principle articulated in Rule 90(A) that “witnesses shall [...] be heard directly by the Chamber.” Nonetheless, the Chamber has the discretion to hear testimony by video-link in lieu of physical appearance for purposes of witness protection under Rule 75, or where it is in the interests of justice to do so. In determining the interests of justice, the Chamber has to assess the importance of the testimony, the inability or unwillingness of the witness to travel to Arusha, and whether a good reason has been adduced for that inability and unwillingness. The burden of proof lies with the party making the request.”³

4. In support of its motion, the Defence annexes an e-mail from the witness to Lead Counsel for the Accused, Ms. Condé, where he states that he informed WVSS that he could not come to Arusha to testify and was told of the possibility to testify via video-link. A second annex is a formal letter from the witness explaining the details of his busy agenda and the reasons why he cannot be away for a minimum of four days to travel to Arusha for his testimony.

5. The Chamber, reiterates that it finds Witness SJD's testimony to be important and relevant since he is allegedly a witness of the events surrounding the death of the Rudahunga family.⁴ The Indictment charges the Accused with the responsibility for that incident. The Chamber is also persuaded that the witness' reasons for being unable to come to Arusha to

¹ *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motions for Additional Time to Disclose Witness' Identifying Information, to Vary its Witness List, and for Video-Link Testimony, and on the Prosecution's Motion for Sanctions (TC), 11 September 2007 (“Decision of 11 September 2007”), para. 14.

² E-mail from Senior Trial Attorney William Egbe, as permitted by the Trial Chamber, dated 22 September 2007.

³ Decision of 11 September 2007, para. 23, citing: *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Prosecutor's Urgent Motion for Witnesses BPA, BLR and BLN to give Testimony Via VideoLink (TC), 14 February 2007; *Prosecutor v. Augustin Bizimungu et al.*, Case No. ICTR-00-56-T, Decision on the Prosecution Request for Witness Romeo Dallaire to Give Testimony by Video-Link (TC), 15 September 2006, para. 13; *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Nsengiyumva Motion for Witness Higaniro to Testify by Video-Conference (TC), 29 August 2006, para. 3; *Prosecutor v. Sylvain Nsabimana et al*, Case No. ICTR-98-42-T, Decision on Sylvain Nsabimana's Extremely Urgent – Strictly Confidential – Under seal Motion to Have Witness AGWA testify via Video-link, 17 August 2006, para. 8.

⁴ See Decision of 11 September 2007, para. 14.

testify, which include the importance of his position and the preparation of an exceptional, upcoming event stated in the annexes to the motion, are credible and justify the authorization of video-link testimony.

6. The Chamber notes that there is limited time remaining for the Defence to present its case. The Chamber queries why the Defence did not make this application for video-link testimony prior to this late stage in the Defence case since it met the witness on 24 August 2007 as submitted, and notes that this application could have been made in a more timely manner. The Chamber expresses its disapproval of the Defence's continuous delays in this regard.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

GRANTS the Defence request for Witness SJD to be heard via video-link;

ORDERS the good offices of the Registrar to arrange for Witness SJD's testimony via video-link in this short time.

Arusha, 24 September 2007, done in English.

Asoka de Silva
Presiding Judge

Taghrid Hikmet
Judge

Seon Ki Park
Judge

[Seal of the Tribunal]