



INTERNATIONAL
CRIMINAL TRIBUNAL

ICTR-2001-73-T
9-11-2007
(7291 - 7288)
International Criminal Tribunal for Rwanda
Tribunal pénal International pour le Rwanda

7291
Zuyf
p

OR: ENG

TRIAL CHAMBER III

Before Judges: Inés Mónica Weinberg de Roca, presiding
Khalida Rachid Khan
Lee Gacuga Muthoga

Registrar: Adama Dieng

Date: 09 November 2007

THE PROSECUTOR

v.

Protais ZIGIRANYIRAZO

Case No. ICTR-2001-73-T

JUDICIAL RECEIVED
2007 NOV -9 11 P 1:58
ARCHIVES

**DECISION ON DEFENCE MOTION FOR A HEARING BY VIDEO-LINK FOR
PROTECTED WITNESS BNZ60 AND MR GASPARD MUSABYIMANA**

Office of the Prosecutor:
Wallace Kapaya
Sylvester Ntukamazina
Jain Morley
Iskandar Ismail
Jane Mukangira

Defence Counsel:
John Philpot
Peter Zaduk

[Handwritten signature]

INTRODUCTION

1. To date the Chamber has heard 35 Defence witnesses and 24 Prosecution witnesses in the instant case. The next and final session of the trial, in which the remainder of the Defence witnesses will be heard, is scheduled to commence on 19 November and to end on 14 December.

2. In its Motion the Defence requests a video-link hearing for two proposed factual witnesses, Mr Gaspard Musabyimana and protected Witness BNZ60, who are scheduled to testify in the final session of the trial.¹ The Defence asserts that the expected evidence of both witnesses is essential to its case.² Both witnesses currently reside in Belgium, and the Defence contends that, because of their legal situations, they cannot leave the country to travel to Arusha to testify in the present case. The Prosecution has filed a Response requesting that the Defence Motion be dismissed.³ The Defence has subsequently filed a Reply and two additional submissions reiterating its original justifications for the requested video-link testimonies of the two witnesses.⁴

DELIBERATIONS

3. The hearing of evidence via video-link is an exception to the general principle enunciated in Rule 90 (A) of the Rules of Procedure and Evidence (the "Rules") that witnesses "shall, in principle, be heard directly by the Chambers."⁵ The Chamber, in the interests of justice, may authorize testimony by video-link, in exceptional circumstances, based on a showing of (i) the importance of the witness' expected testimony; (ii) the inability or unwillingness of the witness to testify directly before the Court; and (iii) good reasons presented for the inability or unwillingness of the witness to attend the trial proceedings.⁶

Defence Witness Mr Gaspard Musabyimana

4. On 23 March 2007, following a *voir dire* hearing, the Chamber held that the first witness in question, Mr Gaspard Musabyimana, failed to qualify as an expert on the alleged *akazu*

¹ Confidential "Motion for a Hearing by Video-Link for Witnesses BNZ60 (Protected) and Mr Gaspard Musabyimana, 12 October 2007 (the "Motion").

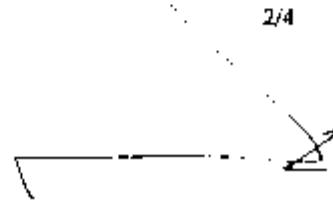
² Motion, paras. 34, 44.

³ Confidential "Prosecutor's Response to the Defence Motion for a Hearing by Video-Link for Witnesses BNZ60 and Gaspard Musabyimana, 19 October 2007.

⁴ "Reply to Prosecutor's Response to Defence Motion for a Hearing by Video-Link for Witnesses BNZ60 (Protected) and Mr Gaspard Musabyimana, 22 October 2007, "Additional Submissions re Defence Motion for a Hearing by Video-Link for Witnesses BNZ60 (Protected) and Mr Gaspard Musabyimana, 30 October 2007, and "Second Additional Submissions re Defence Motion for a Hearing by Video-Link for Witnesses BNZ60 (Protected) and Mr Gaspard Musabyimana, 5 November 2007.

⁵ *Prosecutor v. Protais Zigiranyirazo*, Decision on Defence Motion for a Hearing by Video-Link for Witness BNZ60 (TC), 14 March 2007, para. 2; *Prosecutor v. Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4; *Prosecutor v. Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, para. 15.

⁶ *Prosecutor v. Protais Zigiranyirazo*, Decision on Defence Motion for a Hearing by Video-Link for Witness BNZ60 (TC), 14 March 2007, para. 2; *Prosecutor v. Bagosora*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4; *Prosecutor v. Bagosora*, Decision on Prosecution for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, para. 6.



7289

network in Rwanda. On 13 April 2007, the Chamber granted the Defence request to add Mr Musabyimana to the list of witnesses offering evidence in the last trial session of the case, commencing on 19 November 2007 and ending on 14 December 2007. The Defence now proposes to call Mr Gaspard Musabyimana as a factual witness and submits that he will testify, on the basis of his experience as a Rwandan civil servant, that "there was no known intervention by alleged inner *Akazu* members" during the period 1981 - 1994.⁷

5. Several Defence witnesses have presented evidence in regard to Count I in the Indictment against the Accused, conspiracy to commit genocide, and, specifically about the alleged *Akazu* network in Rwanda. Such witnesses include Mr Anastase Munyandekwe, Antoine Nyetera, Jean Marie Vianney Nkezabera, Jean Marie Ndagijimanabe and Witness BNZ54

6. The Chamber finds that the expected testimony of the witness will be repetitive of evidence already presented and thus is not convinced of the importance of Mr Musabyimana's evidence to the Defence case. Accordingly, without delving into consideration of the availability or unwillingness of the witness to come to Arusha, the Chamber finds that the requested testimony by video-link is unwarranted.

Defence Witness BNZ60

7. According to the Defence, Witness BNZ60 will testify "as to the presence of the Accused in Kanombe on April 7, 8, 9, 10 1994" and the Accused's travel by convoy from Kanombe to the Rubaya Tea Factory, where he remained for approximately a week.⁸ The Defence asserts that this evidence will raise a reasonable doubt about the Accused's alleged participation in the killings on Kesho Hill and his alleged presence at the Kivoyu Roadblock.⁹ The Defence also argues that Witness BNZ60's testimony counters allegations of the Accused's conspiratorial acts relating to the assassination of Rwandan politicians and priests.¹⁰

8. Similar testimonies to date about the activities and whereabouts of the Accused from 7 through 18 April 1994 have been given by numerous Defence witnesses, including Jean-Luc Habaryimana, Jeanne Marie Aimee Habaryimana, Doritilla Mukajyoni Zigiranyirazo, Bernadette Niyonizeye, Agnes Kampunda, Séraphin Bararengana, Marie-Chantal Kamugisha, and Witness BNZ57. On the basis of the Defence submission, the Chamber is of the opinion that the expected evidence of Witness BNZ60 is merely repetitive of the cumulative evidence already presented in relation to the Accused's alleged presence in Kanombe between 7 and 10 April 1994 and at the Rubaya Tea Factory for approximately a week as of 10 April 1994, as well as his alleged travel by convoy between Kanombe and Rubaya. For this reason, the Chamber is not convinced of the importance of the expected testimony of Witness BNZ60. Accordingly, without delving into consideration of the

⁷ Motion, Annex 3 (will say of Mr Gaspard Musabyimana, dated 10 September 2007).

⁸ Motion, paras. 26-30.

⁹ Motion, para. 24.

¹⁰ Motion, para. paras. 26-27.

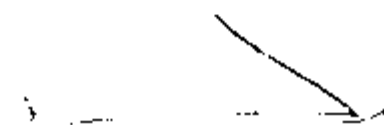
availability or unwillingness of the witness to come to Arusha, the Chamber finds that the requested testimony by video-link is unwarranted.


9. The Chamber takes this opportunity to remind the Defence of the waste of court time and the Tribunal's resources involved in presenting evidence in respect of acts which are not alleged against the Accused in the Indictment, such as the killings of priests in Rambura.

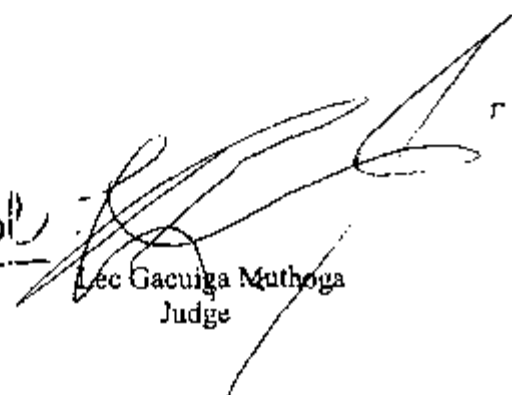
10. The Chamber further notes that the Defence has made two repetitive submissions, on 30 October 2007 and 5 November 2007 respectively, in regard to the present issue, and deems both submissions to be frivolous.

**FOR THE ABOVE REASONS, THE CHAMBER
DENIES the Motion in its entirety.**

Arusha, 09 November 2007, in English.


Iné. Mónica Weinberg de Roca
Presiding Judge


Khalida Rachid Khan
Judge


Lec Gacunga Muthoga
Judge

