

ICTR-00-56-T
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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: 26 May 2008

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

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DECISION ON SAGAHUTU'S REQUEST TO VARY HIS WITNESS LIST

Office of the Prosecutor:

Mr. Alphonse Van
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Ms. Faria Rekkas
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Counsel for the Defence:

Mr. Gilles St-Laurent and Mr. Ronnie MacDonald for Augustin Bizimungu
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndindiliyimana
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa and Mr. Seydou Doumbia for Innocent Sagahutu

INTRODUCTION

1. The Prosecution finished presenting its evidence in this case on 7 December 2006 after calling 72 witnesses. The Defence for Bizimungu closed its case on 14 December 2007 after calling 42 witnesses (including the Accused), subject to three expert witnesses to be called by other Defence teams at a later time, for an expected total of 45 witnesses. Currently, the Defence for Ndingiyimana is presenting its case. The Defence for Sagahutu is scheduled to begin its case after the Defence for Nzuwonemeye, which is expected to begin its case on 23 June 2008.

2. On 7 March 2008, the Chamber ordered the Defence for Sagahutu to submit a revised witness list by 26 May 2008.¹ On 12 March 2008, the Defence for Sagahutu submitted a request to replace Witness Colonel Jacques Duvivier, who is listed as No. 64 on Sagahutu's List of Witnesses, with Dr Helmut Strizek.² The Prosecution did not file a response.

3. The Sagahutu Defence submits that the reason why Dr Helmut Strizek was not included on their preliminary witness list is because he was belatedly brought to their attention.

DELIBERATIONS

4. Rule 73 *ter*(E) provides that after commencement of the Defence case, the Defence may, in the interest of justice, request for leave to reinstate the list of witnesses or vary its decision as to which witnesses are to be called.

5. The Chamber recalls that a party may be allowed to vary its witness list upon a showing of good cause and where the requested variance is in the interests of justice.³ The relevant factors to be considered by the Chamber in determining whether a requested variation of a witness list is in the interest of justice, include 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 proffered for the late

¹ See *The Scheduling Order following the Status Conference on 5 and 6 March 2008*, dated 7 March 2008

² See *Requête en remplacement du témoin Jacques Duvivier par Helmut Strizek au numéro 64 de la liste des témoins du capitaine Innocent Sagahutu- Article 73 ter(E) du RPP*, filed on 12 March 2008

³ *Prosecutor v. Karemera et al.*, Decision on Prosecutor's Motion to vary its Witness list(TC), 2 October 2006, para.3; *Prosecutor v. Musema*, Decision on the Prosecutor's Request for Leave to call six new witnesses(TC), 20 April 1999, para 4,13; *Prosecutor v. Bagosora et al.*, Decision on Prosecution Motion for addition of Witnesses pursuant to Rule 73 bis(E), 26 June 2003, para.13

addition of witnesses and potential delays to the proceedings that might result from the variation of the witness list.⁴

6. Since the requested variation is a straight substitution of one witness for another, the Chamber finds that granting the request will not have an adverse effect on the expected duration of Sagahutu's Defence. The Chamber finds the justification proffered by the Defence for Sagahutu for the variation of its witness list to be reasonable. Additionally, the submissions put forth by Sagahutu's Defence suggest that the prospective testimony of Dr Helmut Strizek might be relevant to the charges against the Accused.

7. The Chamber does not envisage any delays to the proceedings as a result of granting the requested variation given the fact that Sagahutu's Defence is yet to commence its case. Finally, the Chamber finds that given the timely submission of the request, the variation of the witness list will not cause prejudice to the Prosecution.

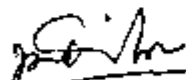
8. The Chamber notes that Sagahutu Defence intends to call Mr Helmut Strizek as an expert witness. The Chamber, therefore, reminds the Defence that the above holding should not be construed to imply a relief from complying with the procedural requirements laid out in Rule 94bis pertaining to prospective expert witnesses.

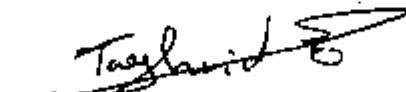
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion.

Arusha, 26 May 2008




Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

⁴ *Prosecutor v. Ndindiyimana et al.*, Case No. ICTR-00-56-T, Decision on Nzuwonemeye's request to vary his witness list, 31 January 2008; *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motion for Additional Time to Disclose Witnesses' Identifying Information, to Vary Its Witness List and For Video-Link Testimony, and on the Prosecution's Motion For Sanctions (TC), 11 September 2007. See also *Prosecutor v. Zigiranyirazo*, Case No. ICTR-2001-73-T, Decision on the Defence Motion to Vary the Defence List (TC), 28 March 2007, para. 3; *Prosecutor v. Bagasora et al.*, Decision on Bagasora Motion to Present Additional Witnesses and Vary Its Witness List (TC), 17 November 2006, para. 2.