



ICTR-01-69-T  
16-06-2008  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

2965  
1994

(2965 - 2963)

ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

**Before:** Judge Erik Mase, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 16 June 2008

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**THE PROSECUTOR**

v.

**Hormisdas NSENGIMANA**

*Case No. ICTR-2001-69-T*

**DECISION ON DEFENCE MOTION TO PRESENT AN ADDITIONAL WITNESS**

**The Prosecution**  
Wallace Kapaya  
Charity Kagwi-Ndungu  
Sylvester Ntukamazina  
Brian Wallace  
Iskandar Ismail  
Jane Mukangira  
Beatrice Chapaux

**The Defence**  
Emmanuel Altit  
David Hooper

6/1

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Mose, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

**BEING SEIZED OF** the Defence Motion to Vary its Witness List, filed on 12 June 2008;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Defence, which commenced its case on 2 June 2006, seeks to add Witness GFR99 to its witness list. It argues that her potential testimony would be of probative value to the case, without prejudicing the Prosecution. The Prosecution does not oppose the motion.<sup>1</sup>

**DELIBERATIONS**

2. Rule 73 *ter* (E) of the Rules of Procedure and Evidence states that after the commencement of the Defence case, the Defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called. According to case law, the Chamber may grant such a motion where it considers it to be in the interests of justice, and where there is "good cause" to do so, considering factors such as the materiality of the testimony, the complexity of the case, prejudice to the other party, including elements of surprise, on-going investigations, replacements and corroboration of evidence.<sup>2</sup>

3. These considerations require a close analysis of each witness, including the sufficiency and time of disclosure of witness information to the other party; the probative value of the proposed testimony in relation to existing witnesses and allegations in the indictment; the ability of the other party to make an effective cross-examination of the proposed testimony, given its novelty or other factors; and the justification offered for the addition of the witnesses.<sup>3</sup>

4. According to the Defence, the testimony of Witness GFR99 is of probative value. She will testify that Hormisdas Nsengimana never displayed a "divisionist" attitude. As an eye-witness in Nyanza during the genocide, she will also give evidence about his behaviour during that period, including when she attended mass.<sup>4</sup> The Chamber accepts that her evidence is material, as it will respond to Prosecution evidence. Her testimony does not

<sup>1</sup> *Requête de la Défense aux fins d'être autorisée à ajouter un témoin à sa liste initiale* etc., paras. 6-10; T. 13 June 2008 p. 30 (Prosecution Counsel: "In the circumstances ... we do not object to ... the addition of the witness").

<sup>2</sup> *Nsengimana*, Decision on Prosecution Motion for Varying the Witness List (TC), 4 February 2008, para. 3; *Nahimana et al.*, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses (TC), 26 June 2001, paras. 19-20.

<sup>3</sup> *Nsengimana*, Decision on Prosecution Motion for Varying the Witness List (TC), 4 February 2008, para. 4; *Bagosora et al.*, Decision on Bagosora Motion to Present Additional Witnesses and Vary its Witness List (TC), 17 November 2006, para. 2; Decision on Defence Motions to Amend the Defence Witness List (TC), 17 February 2006, para. 4; Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E), 26 June 2003, para. 14.


<sup>4</sup> Motion, para. 6 and Annex 1. According to the Defence, she will also confirm the veracity of an interview given by her now deceased father to the Defence in 2004.

appear to be repetitive. The Prosecution received the witness statement as well as a summary on 6 June 2008.<sup>5</sup> It has no objection to her being called. The Chamber notes that the Defence recently reduced its witness list from 60 to 28 witnesses. It finds that it is in the interest of justice to add Witness GFR99 to the witness list.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the motion.

Arusha, 16 June 2008



Erik Mose  
Presiding Judge



Sergi Alekseevich Egorov  
Judge



Florence Rita Arrey  
Judge

[Seal of the Tribunal]



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<sup>5</sup> Motion, para. 8.