

ICTR-07-91-PT
10-11-2008
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 10 November 2008

JUDICIAL REGISTRY SERVICES
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THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-2007-91-PT

**DECISION ON DEFENCE MOTION TO HAVE WITNESS BLP REMOVED FROM
PROSECUTION LIST OF WITNESSES AND FOR THE PROSECUTION TO FILE A
PRE-TRIAL BRIEF**

Rules 54, 73bis and 93 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Florida Kabisanga

For the Accused

Allison Turner

INTRODUCTION

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1. The Accused, Léonidas Nshogoza, has been charged with contempt of the Tribunal and attempt to commit acts punishable as contempt of the Tribunal.¹
2. At a Pre-Trial Conference held on 22 October 2008, the Prosecution indicated that it may call Witness BLP to testify.² Further, in response to enquiries from the Chamber, the Prosecution indicated that it did not intend to file a pre-trial brief.³
3. The Defence now seeks an order from the Chamber for the removal of Witness BLP from the list of Prosecution witnesses, and an order for the Prosecutor to file a pre-trial brief.⁴
4. The Prosecutor did not respond to the Motion.

DISCUSSION

Request to Have Witness BLP Removed from the Prosecution List of Witnesses

5. The Defence submits that Witness BLP would be unable to testify on any element of the Indictment, that Rule 93 of the Rules of Procedure and Evidence does not support the inclusion of a witness to be called to establish a pattern of behaviour in cases of contempt of the Tribunal; and that the inclusion of Witness BLP will broaden the scope of the proceedings.⁵
6. The Chamber notes that at the Pre-Trial Conference of 30 October 2008, the Prosecutor stated that he intended to remove Witness BLP from the Prosecution list of witnesses.⁶ The Chamber therefore considers the Defence request regarding Witness BLP to be moot.

Request to Order the Prosecution to File a Pre-Trial Brief

7. The Defence seeks an order requiring the Prosecution to file a pre-trial brief in accordance with Rule 73 bis.⁷ The Defence asserts that the complexity of this case warrants: (i) a pre-trial brief; (ii) a list of admissions by the parties; (iii) a statement of matters not in dispute; and (iv) a statement of contested matters of fact and law. It is submitted that these items would help to clarify the issues to be addressed at trial.⁸

¹ *Prosecutor v. Léonidas Nshogoza*, ICTR-07-91-I, "Indictment", 7 January 2008. The Accused is charged with contempt of the Tribunal, punishable under Article 14 of the Statute of the International Tribunal for Rwanda ("Statute") and Rule 77 of the Rules of Procedure and Evidence ("Rules").

² *Nshogoza*, T., 22 October 2008, p 13.

³ T, 22 October 2008, p 2.

⁴ Defence Motion to Have Witness BLP Removed From Prosecution List of Witnesses and for Prosecution to File Pre-Trial Brief, filed 29 October 2008 ("Motion").

⁵ Motion, paras.5 - 7.

⁶ Draft T. 30 October, p 5.

⁷ Rule 73 bis provides, in relevant part: "At the Pre-Trial Conference the Trial Chamber or a Judge, designated from among its members, may order the Prosecutor...to file the following: (i) A pre-trial brief addressing the factual and legal issues...."

⁸ Motion, para. 13. See also T. 22 October 2008 at pp. 7 and 12: the Defence submits that the case is not a simple one, but rather that it is complicated because it involves an underlying case.



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8. The Chamber recalls its power under Rule 54 of the Rules to make such orders as may be necessary for the preparation and conduct of the trial.⁹ Given the Defence assertion that this case is complicated because it involves an underlying case,¹⁰ the Chamber considers that a pre-trial brief would advance the proceedings by clarifying legal and factual issues. In addition, the Chamber considers that a list of admissions by the parties, and a statement of other matters which are not in dispute, would assist in clarifying the issues to be addressed at trial.

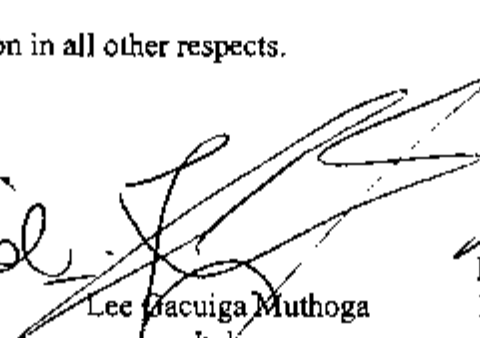
FOR THESE REASONS the Chamber,

ORDERS the Prosecution to file a pre-trial brief addressing the factual and legal issues arising from the Indictment, and which includes a statement of admissions and other matters not in dispute, no later than 25 November 2008.

DENIES the Defence Motion in all other respects.

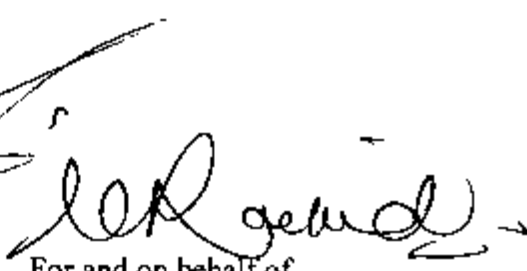
Arusha, 10 November 2008


Khalida Rachtid Khan
Presiding Judge


Lee Makuiga Muthoga

Judge
[Seat of the Tribunal]




For and on behalf of
Emile Francis Short
Judge

⁹ Rule 54 provides that "At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

¹⁰ T. 22 October 2008, p.12.