

ICTR-05-88-T
13-11-2008
(781-778)

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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: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 13 November 2008

THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-05-88-T

JUDICIAL RECORDS ARCHIVES
2008 NOV 13 P 2:20
APD/Sum 13/11/08

**CONSOLIDATED DECISION ON PROSECUTION MOTION CONCERNING
DEFENCE COMPLIANCE WITH RULE 73TER AND DEFENCE MOTIONS TO
VARY WITNESS LIST**

Rule 73 ter of the Rules of Procedure and Evidence

Office of the Prosecutor

Christine Graham
Veronic Wright
Ousman Jammeh
Kartik Murukutla

Defence Counsel

Arthur Vercken
Anta Guisse

APD

1. The presentation of the Defence case is scheduled to commence on 17 November 2008.¹ On 8 July 2008, the Chamber ordered the Defence for Kalimanzira to file, among other things, its proposed list of witnesses no later than 17 September 2008, as well as an expected order of appearance of the witnesses scheduled to be heard during their case no later than 17 October 2008.² On 17 September 2008, the Defence filed its pre-trial brief, in which it provided, among other things, a proposed list of 75 potential witnesses.³ On 17 October 2008, the Defence filed a new list of 69 potential witnesses and an expected order of appearance for the first 11 witnesses.⁴

2. On 22 October 2008, the Defence moved for leave to add Witnesses KXC and KXL to its list, and requested authorization to correct several errors, mainly typographical, to its list of 17 October 2008.⁵ In its response, the Prosecution did not oppose the Defence Motion.⁶ However, the Prosecution filed a motion seeking relief for the Defence's failure to fully and properly disclose witness statements, identifying information, sequencing, and notice of alibi in due time.⁷ Since then, the Defence has gradually provided witness identifying information, as well as a new sequence of 30 witnesses, and has made several more corrections to its witness list.⁸ The Prosecution no longer seeks relief in terms of witness sequencing and recognizes that some deficiencies have been remedied.⁹

3. The Chamber accepts the corrected list of 71 potential Defence witnesses filed 4 November 2008 as being the final Defence witness list. This list provides the pseudonym and name of each witness. The Chamber notes that the identifying information that the Defence

¹ *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T ("Kalimanzira"), Scheduling Order (TC), 8 July 2008.

² *Ibidem*.

³ *Mémoire préalable à la présentation des moyens de preuve à décharge*, filed confidential on 17 September 2008.

⁴ *Liste des témoins de la défense*, filed confidential on 17 October 2008.

⁵ *Requête aux fins de rectification d'erreurs matérielles et d'ajout des témoins KXC et KXL dans la liste des témoins potentiels*, filed confidential on 22 October 2008; *Liste corrigée des témoins potentiels de la défense*, filed confidential 22 October 2008.

⁶ Prosecution Response to Defence Motion for Leave to Vary its List of Defence Witnesses, filed 23 October 2008.

⁷ Prosecution Motion Concerning Defence Compliance with Rule 73ter and the Trial Chamber's Orders, filed 22 October 2008 ("Prosecution Motion").

⁸ *Liste des informations détaillées sur les témoins de la défense*, filed confidential 27 October 2008; *Requête aux fins de rectification d'une erreur matérielle supplémentaire*, filed confidential 27 October 2008; *Liste corrigée 3 des témoins potentiels de la défense*, filed confidential 27 October 2008; *Mémoire en réponse à la "Prosecution Concerning Defence Compliance with Rule 73ter and the Trial Chamber's Orders"*, filed 28 October 2008 ("Defence Response"); *Requête aux fins de rectification de deux erreurs matérielles supplémentaires*, filed confidential 30 October 2008; Electronic correspondence "Subject: 30 first witnesses", dated 31 October 2008; *Requête aux fins de rectification de 3 erreurs matérielles supplémentaires*, filed confidential 4 November 2008; *Liste corrigée 4 des témoins potentiels de la défense*, filed confidential 4 November 2008.

⁹ Prosecution Further Submissions in Respect of Its Motion Concerning Defence Compliance with Rule 73ter and the Trial Chamber's Orders, filed 29 October 2008.

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should have provided by 17 October 2008 is incomplete and was provided 10 days late, in violation of the Chamber's 14 December 2007 Order¹⁰ and Rule 69 (C) of the Rules of Procedure and Evidence.

4. The Chamber notes the order of appearance of 30 witnesses provided by the Defence by email correspondence. However, the numbers of hours the Defence has anticipated in its pre-trial brief for the examination-in-chief of each witness adds up to 90 hours. The Chamber has already ordered the Defence to limit the presentation of its case to 20 trial days, recalling that each trial day lasts approximately six hours, and that the time allocated for cross-examination is roughly equal to that allocated for examination-in-chief, with a 15% contingency for re-direct examination or unforeseen events.¹¹ The Defence's current order of appearance would require a projection of approximately 207 trial hours, or 35 trial days.

5. The Chamber has reviewed the anticipated testimonies of each witness and determines that 90 hours of examination-in-chief anticipated by the Defence for these 30 witnesses is exaggerated. The Chamber considers that these witnesses could on average testify on the issues presented in half the time, and instructs the Parties to limit their examination of these witnesses to permit the Defence case to be presented in 20 trial days.

6. On the issue of notice of alibi, the Prosecution submits that the witness summaries in the Defence pre-trial brief suggest that the Defence may intend to call certain alibi witnesses. The Prosecution therefore requests the Defence to make the necessary disclosures pursuant to Rule 67 (A)(ii)(a) of the Rules, which envisages that the Defence shall give notice of its intention to rely on an alibi before the commencement of the trial, in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

7. The inference of a possibility for the Defence to call alibi witnesses does not amount to notification of an alibi defence. Further, Rule 67 (B) of the Rules specifies that failure of the Defence to provide notice of an alibi shall not limit the right of the accused to rely on an alibi defence. This provision is consistent with the principle of the presumption of innocence and the duty of the Prosecution to prove guilt beyond reasonable doubt. However, compliance at a late stage in the proceedings may have an impact on the extent to which the alibi is believed.

¹⁰ *Kalimanzira*, Decision on Defence Motion for Protective Measures (TC), 14 December 2007.

¹¹ *Kalimanzira*, Consolidated Decision on Prosecution Motion to Reduce the Number of Defence Witnesses to Testify and on Defence Motion to Add Callixte Kalimanzira to the Defence Witness List (TC), 1 October 2008.

FOR THESE REASONS, THE CHAMBER

GRANTS the Defence Motions to vary its witness list;

ORDERS the Defence to reduce the numbers of hours of examination-in-chief anticipated for each Defence witness in the order of appearance to permit the Defence case to be presented in 20 trial days;


GRANTS the Prosecution Motion, in part; and

ORDERS the Defence to correct all existent deficiencies in disclosures by providing the Prosecution with

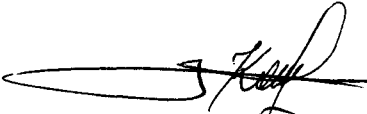
- sufficiently detailed and complete personal information for each listed Defence witness, and
- unredacted Defence witness statements, where available,

no later than 14 November 2008.

Arusha, 13 November 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Vagn Joensen
Judge


Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

