



UNITED NATIONS  
NATIONS UNIES

ICTR-07-91-PT  
02-01-2009  
(2340 - 2337)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

2340  
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OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Mr. Adama Dieng

**Date:** 2 January 2009

**THE PROSECUTOR**

v.

**Léonidas NSHOGOZA**

**Case No. ICTR-07-91-PT**

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**DECISION ON DEFENCE FURTHER MOTION FOR THE PROSECUTOR TO  
REMOVE WITNESS BLP FROM HIS WITNESS LIST**

*Rules 54, 73 bis, 77, 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

1. The Defence brought a motion seeking the removal of Witness BLP from the Prosecutor's list of witnesses on 29 October 2008.<sup>1</sup> On 10 November 2008, the Chamber issued a Decision on the matter.<sup>2</sup> In that Decision, the Chamber concluded that the request for the removal of Witness BLP was moot because the Prosecutor had advised, during the Pre-Trial Conference held in this case on 30 October 2008, that he would remove Witness BLP from his list of witnesses.<sup>3</sup>
2. In his Pre-Trial Brief, filed on 25 November 2008, the Prosecutor asserts that the Accused's meetings with Witness BLP demonstrate a pattern of interfering with protected Prosecution witnesses.<sup>4</sup>
3. By way of Motion filed on 27 November 2008, the Defence now seeks an order to remove Witness BLP from the Prosecutor's list of witnesses, or alternatively, a postponement of the trial to six weeks from 2 February 2009.<sup>5</sup> The Defence also submits in its Motion, and Reply, that it will broaden the scope of the case if Witness BLP, or any aspect of the *Prosecutor v. Rukundo*<sup>6</sup> proceedings, forms part of the Prosecutor's case.<sup>7</sup>
4. The Prosecutor opposes the Motion.<sup>8</sup> The Prosecutor submits that the Motion is unwarranted in light of the representations made during the 30 October Pre-Trial Conference, and the Chamber's 10 November Decision.<sup>9</sup>

## DISCUSSION

### *The Applicable Law*

5. Rule 93 (A) of the Rules of Procedure and Evidence ("Rules") provides that "[e]vidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law may be admissible where it is in the interests of justice." Acts tending to show a pattern of conduct must be disclosed by the Prosecutor pursuant to Rule 66.<sup>10</sup>

<sup>1</sup> *Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-PT, "Defence Motion to Have Witness BLP Removed from Prosecution List of Witness and for Prosecution to File a Pre-Trial Brief," filed 29 October 2008.

<sup>2</sup> *Nshogoza*, Decision on Defence Motion to Have Witness BLP Removed from the Prosecution List of Witnesses and for the Prosecution to File a Pre-Trial Brief, 10 November 2008 ("10 November Decision").

<sup>3</sup> 10 November Decision, para. 6.

<sup>4</sup> *Nshogoza*, "Prosecutor's Pre-Trial Brief," filed 25 November 2008, paras. 29-30.

<sup>5</sup> *Nshogoza*, "Defence Further Motion for a Court Order to the Prosecutor to Remove Witness BLP from his Witness List," filed 27 November 2008 ("Motion").

<sup>6</sup> *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-01-70-T.

<sup>7</sup> Motion, paras. 9-12; *Nshogoza*, "Defence Reply to Prosecutor's Response to 'Defence Further Motion (...),' " ("Reply") filed 4 December 2008, paras. 5-6.

<sup>8</sup> *Nshogoza*, "Prosecutor's Response to 'Defence Further Motion for a Court Order to the Prosecutor to Remove Witness BLP from his Witness List (Rules 54, 73 bis, and 93 ICTR R.P.E.),' " filed 28 November 2008 ("Response").

<sup>9</sup> Response, paras. 3-4.

<sup>10</sup> Rule 93 (B).

6. Rule 77 (E) of the Rules states that Parts Four to Eight of the Rules apply *mutatis mutandis* to contempt proceedings.

*Withdrawal of Witness BLP*

7. The Defence submits that it is not clear whether or not witness BLP will testify, and that it has been preparing for trial on the basis that Witness BLP will not testify.<sup>11</sup>

8. The Chamber considers that this matter was addressed by the Chamber's 10 November Decision, wherein the Chamber concluded that the matter was moot.

9. For greater clarity, the Chamber expressly accepts that Prosecutor's submission during the 30 October Pre-Trial Conference,<sup>12</sup> as well as the Prosecutor's written submissions, in his Response, that Witness BLP will not be called to testify.<sup>13</sup>

*Does Rule 93 Apply to Contempt Proceedings?*

10. The Chamber recalls that Rule 93, which is found in Part Six of the Rules, applies *mutatis mutandis* to proceedings under Rule 77. This means, therefore, that Rule 93 applies to contempt proceedings, with the necessary changes in detail.<sup>14</sup> Thus, evidence of a pattern of conduct relevant to contempt of court can be admitted in proceedings under Rule 77.

*Should the Chamber Further Postpone the Trial?*

11. The Defence asserts that if any evidence in relation to the *Rukundo* case is presented, it will need to carry out twice the amount of investigation work; that it will require significant additional funds from the Registry; and that it will need the trial to be postponed for six additional weeks in order to prepare the Defence case.<sup>15</sup>

12. The commencement of the trial has already been postponed to allow the Defence several weeks to investigate and prepare its case.<sup>16</sup> The Prosecutor's case is currently scheduled to commence on 9 February 2009.

13. The Prosecutor filed his Pre-Trial Brief on 25 November 2008. Since that time, the Defence has been aware of the Prosecutor's intention to introduce evidence of a pattern of conduct. In addition, the Chamber notes that in the Witness List filed by the Prosecutor on 27

<sup>11</sup> Motion, paras. 4-9.

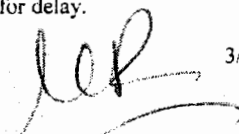
<sup>12</sup> 1. 30 October, 2008, p. 5.

<sup>13</sup> Response, paras. 3-5.

<sup>14</sup> *Black's Law Dictionary*, 6<sup>th</sup> Edition (West Publishing Co, Minnesota, 1990), defines *mutatis mutandis* as a Latin phrase meaning: "[w]ith the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary...."

<sup>15</sup> Motion, paras. 12- 14.

<sup>16</sup> *Nshogoza*. Decision on Defence Motions for Disclosure Under Rules 66 and 68 of the Rules of Procedure and Evidence, 22 December 2008, paras. 15-17. During the October Pre-Trial Conference, the Defence requested six to eight weeks to prepare its case. The trial is now scheduled to commence on 9 February 2009, which would amount to approximately fourteen weeks from the time of the initial Defence request for delay.



October 2008, Rule 93 was identified in relation to Witness BLP's testimony;<sup>17</sup> and, the Defence raised the applicability of Rule 93 in its motion filed on 29 October 2008.

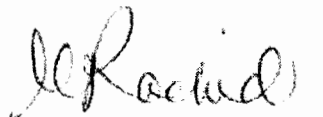
14. The Chamber further notes that Counsel for the Accused is already familiar with the circumstances surrounding meetings between Witness BLP and the Accused.<sup>18</sup>


15. The Accused has not been charged under the Indictment in respect of any meetings with Witness BLP.<sup>19</sup> The Chamber is, therefore, not satisfied that any necessary investigations regarding meetings between the Accused and Witness BLP will require several weeks.


**FOR THESE REASONS**, the Chamber

**DENIES** the Defence motion in its entirety.

Arusha, 2 January 2009

  
For and on Behalf of  
Lee Gacuiga Muthoga  
Judge

  
Khalida Rachid Khan  
Presiding Judge  
[Secretary of the Tribunal]

  
For and on behalf of  
Emile Francis Short  
Judge



<sup>17</sup> *Nshogoza*, "Prosecutor's Filing of a List of Witnesses and Exhibits," filed 27 October 2008. The Defence was aware of the Prosecutor's reliance on Rule 93, and raised the applicability of the Rule in its 29 October motion for the removal of Witness BLP from the Prosecutor's list of witnesses.

<sup>18</sup> Counsel for the Accused in this case was Co-Counsel in the *Rukundo* proceedings, where the issue of meetings between Witness BLP and the Accused arose. See, for example, *Rukundo*, Decision on the Haguma Report, 14 December 2007, at paragraphs 15-16, where that Chamber makes findings regarding meetings between Witness BLP and the Accused.

<sup>19</sup> *Nshogoza*, Indictment, 7 January 2004.