



UNITED NATIONS
NATIONS UNIES

1002-07-91-PT
3-2-2009
(2612-2610)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 3 February 2009

JUDICIAL RECORDS ARCHIVES
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A. J. M. 03/02/2009

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-PT

**DECISION ON DEFENCE MOTION FOR CLARIFICATION
AND REQUEST FOR AN EXTENSION OF TIME**

Rules 54 and 73 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. On 28 January 2009, the Chamber ordered the Defence to file, *ex parte*, a list of witnesses, along with pseudonyms, and a summary of anticipated witness testimony and the related counts in the Indictment ("Order").¹ The deadline for filing the list was 2 February 2009.
2. On 2 February 2009, the Defence filed a motion seeking "clarification" of the Chamber's Order or an extension of time to comply (Motion).²

DISCUSSION

3. The Chamber considers that the request for clarification is without merit. On 9 and 16 January 2009, pursuant to an order from this Chamber, the Defence filed a list of approximately forty witnesses that it intends to call to testify in these contempt proceedings.³ There is no inconsistency between the Scheduling Order,⁴ which advises that the Chamber will hold a pre-Defence conference at the close of the Prosecutor's case, during which the Chamber shall make orders regarding the list of Defence witnesses, and the subsequent Order requiring a summary of anticipated testimony of these witnesses.
4. The Chamber recognizes that the Defence witness list or summaries may change as the trial proceeds. The Order clearly took into account the fact that a pre-Defence conference will be held, and does not impede the ability of the Defence to alter its list of witnesses or summary of anticipated testimony after hearing the Prosecution evidence.⁵
5. The Defence submits that the task is "rendered impossible" because it does not know the Prosecution evidence.⁶ The Trial is scheduled to commence on 9 February 2009 and the Defence case is scheduled to commence on 9 March 2009. The Defence should be in a position to know why it is calling the witnesses on its list to testify, and how their anticipated testimony relates to the charges against the Accused.
6. The Defence does not provide any satisfactory reason for failing to comply with the 2 February 2009 deadline. The Chamber considers that the Motion is without merit and that costs should therefore be denied.

FOR THESE REASONS, the Chamber

¹ *Prosecutor v. Nshogoza*, Order for the Defence to File a Summary of Anticipated Witness Testimony, 28 January 2009 ("Order").

² *Nshogoza*, Motion for Clarification and Request for an Extension of Time, filed 2 February 2009.

³ *Nshogoza*, "Defence Strictly Confidential, *Ex Parte* and Under Seal Filing," filed 9 January 2009; *Nshogoza*, "Defence Further Strictly Confidential, *Ex Parte* and Sealed Filing," filed 16 January 2009.

⁴ *Nshogoza*, Scheduling Order, 11 December 2008. Even if there had been an inconsistency, the latter order would supersede any prior order.

⁵ Order.

⁶ Motion, para. 13-14.



DENIES the Defence Motion; and

ORDERS, pursuant to Rule 54 of the Rules of Procedure and Evidence, that the Defence immediately comply with the Chamber's Order of 28 January 2009; and

ORDERS, pursuant to Rule 73 (F) of the Rules, that the Registry withhold the payment of any costs associated with the filing of Defence "Motion for Clarification and Request for an Extension of Time," filed 2 February 2009.

Arusha, 3 February 2009



Khalida Rachid Khan
Presiding Judge



Lee Gacuiya Muthoga
Judge



With the consent and
on behalf of
Emile Francis Short
Judge

[Seal of the Tribunal]

