



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1472-05-82-I
1-4-2009
(1017 - 1015)

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OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 1 April 2009

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-PT

JUDICIAL RECORDS ARCHIVES
RECEIVED

2009 APR - 1 A 11: 27

**FURTHER ORDERS TO THE PARTIES CONCERNING
COMMENCEMENT OF TRIAL**

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

Office of the Prosecutor:
Charles Adeogun-Phillips
Ibukunolu Alao Babajide
Thembile Segoete

Counsel for the Defence:
Maroufa Diabira
Dorothee Le Fraper du Hellen

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III, composed of Judges Khalida Rachid Khan, Lee Gacuiga Muthoga, and Aydin Sefa Akay;

NOTING that at the status conference with the Parties held on 16 December 2008 (“Status Conference”), the Chamber ordered, pursuant to Rule 73*bis* of the Rules of Procedure and Evidence (“Rules”) that the Prosecution file, no later than 20 February 2009:¹

- (i) a Pre-Trial Brief addressing the factual and legal issues;
- (ii) Admissions by the Parties and a statement of all matters in dispute;
- (iii) A statement of contested matters of facts and law;
- (iv) A list of witnesses the Prosecutor intends to call with:
 - (a) The name of or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment on which each witness will testify; and
 - (d) The estimated length of time required for each witness;
- (v) A list of exhibits the Prosecutor intends to offer stating, where possible, whether or not the Defence has any objection as to authenticity.

NOTING FURTHER that at the Status Conference, the Chamber requested the Prosecution to file, in good time, any motions for the transfer of detained witnesses pursuant Rule 90*bis*; for the admission of written statements in *lieu* of oral testimony pursuant to Rule 92*bis*; or for judicial notice pursuant to Rule 94;²

CONSIDERING that while the Prosecution filed a Pre-Trial Brief on 20 February 2009 addressing the factual and legal issues and attaching a list of witnesses (“Prosecution Witness List”) in accordance with the Chamber’s Order of 16 December 2008, the Chamber has not received: (i) admissions by the Parties; (ii) a statement as to the matters not in dispute; or (iii) a statement of contested matters of facts and law;³

CONSIDERING that while the Prosecution has provided the Chamber with a list of exhibits it intends to offer (“Exhibit List”), the Exhibit List does not indicate whether the Defence has any objection as to authenticity;

CONSIDERING that while the Prosecution filed a motion on 11 February 2009 for the transfer of detained witnesses pursuant to Rule 90*bis*,⁴ the Prosecution did not provide the requisite verification under Rule 90*bis* (B);⁵

¹ *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-PT, T. 16 December 2008, pp. 4 – 5 (“Chamber’s Order of 16 December 2008”)

² *Ntawukulilyayo*, T. 16 December 2008, p. 5.

³ See *Ntawukulilyayo*, The Prosecutor’s Pre-Trial Brief, 20 February 2009.

⁴ *Ntawukulilyayo*, The Prosecutor’s Request for an Order Transferring Detained Witnesses Pursuant to Rule 90*bis* of the Rules of Procedure and Evidence, 11 February 2009 (“Motion of 11 February 2009”).

⁵ Rule 90*bis* (B) provides that the transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been met:

- (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

The Motion of 11 February 2009 (para. 3) states that the Prosecutor is awaiting the response from the Rwandan Minister of Justice.



RECALLING that pursuant to Rule 66 (A) (ii), the Prosecution must disclose, at least 60 days before the date set for trial, copies of the statements of all witnesses it intends to call to testify;

CONSIDERING that no statements have been disclosed pursuant to Rule 66 (A) (ii) in relation to three of the factual witnesses on the Prosecution Witness List, namely, Witnesses BAV, BAO, and AZR;⁶

RECALLING the Prosecution’s continuing obligation under Rule 68;⁷

CONSIDERING that while the Prosecution has made disclosures pursuant to Rule 66 (A) (i) and (ii), no disclosures have been filed pursuant to Rule 68;⁸

RECALLING FURTHER the Chamber’s obligation to ensure a fair and expeditious trial, and to respect the rights of the Accused, pursuant to Articles 19 and 20 of the Statute of the Tribunal, and the Chamber’s authority to issue such orders as may be necessary for the preparation of the trial pursuant to Rule 54; and

CONSIDERING that the trial in this case is scheduled to commence on 4 May 2009,⁹

THE CHAMBER HEREBY

I. ORDERS the Parties to jointly file, no later than 20 April 2009:

- (i) Any admissions and a statement of other matters not in dispute; and
- (ii) A statement of contested matters of facts and law;

II. ORDERS the Prosecution to file, after discussion with the Defence and no later than 20 April 2009, an amended Exhibit List which indicates, in accordance with Rule 89 (C),¹⁰ the relevancy and probative value of each exhibit, and in accordance with Rule 73bis (B) (v) states, where possible, whether or not the Defence has any objection concerning authenticity;

⁶ See *Ntawukulilyayo*, Prosecutor’s Compliance with the Interim Order to the Parties Regarding Disclosure, 23 March 2009, and Defence “*Réponse à la demande d’informations émise par la Chambre dans sa décision du 18 mars 2009*”, 23 March 2009. The Parties provided separate disclosure tables and neither table showed that disclosures had been made in respect of Prosecution Witnesses BAV, BAO, and AZR.

⁷ Rule 68 provides that the Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence. There is no prescribed time limit for disclosure under Rule 68 and pursuant to Rule 68 (E), such disclosure must be made even after completion of trial.

⁸ Rule 66 (A) (i) provides for disclosure by the Prosecutor within 30 days of the accused’s initial appearance, of copies of the supporting material which accompanied the indictment when confirmation was sought, as well as prior statements obtained by the Prosecutor from the accused.

⁹ *Ntawukulilyayo*, Decision on Defence Motion Alleging Breach of Prosecution’s Disclosure Obligations; Chamber’s Warning to Prosecution Counsel; and Scheduling Order Concerning Commencement of Trial, 26 March 2009.

¹⁰ Rule 89 (C) provides that a Chamber may admit any relevant evidence which it deems to have probative value.



III. ORDERS the Prosecution to either (i) file a revised Witness List removing Witnesses BAV, BAO, and AZR from the said list; or (ii) show cause as to why these witnesses should not be removed from the Witness List, no later than 6 April 2009;

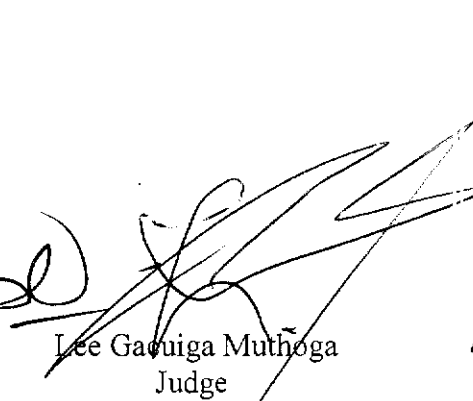
IV. ORDERS the Prosecution to file any motions for the admission of written statements in lieu of oral testimony pursuant to Rule 92bis, no later than 27 April 2009; and

V. ORDERS the Prosecution to file the requisite verification under Rule 90bis (B) in respect of its Motion of 11 February 2009 for the transfer of detained witnesses, no later than 10 April 2009.

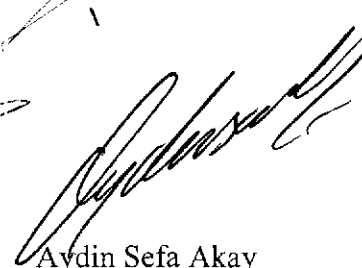
Arusha, April 2009



Khalida Rachid Khan
Presiding Judge



Lee Gaciga Muthoga
Judge



Aydin Sefa Akay
Judge

[Seal of the Tribunal]

