

ICTR-00-55B-T
15-4-2009
(1505-1503)

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OR: ENG

TRIAL CHAMBER III

Before Judges: Arlette Ramaroson, presiding
Taghrid Hikmet
Joseph Masanche

Registrar: Adama Dieng

Date: 15 April 2009

THE PROSECUTOR
v.
ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-T

JUDICIAL RECORDS/ARCHIVES
2009 APR 15 P 3:02
15/04/2009

**EXTREMELY URGENT DECISION TO RECONSIDER THE TRIAL
CHAMBER'S DECISION OF 6 APRIL 2009 AND TO ORDER THE
TESTIMONY OF WITNESS QX TO BE TAKEN BY DEPOSITION**

Rule 71 of the Rules of Procedure and Evidence

Office of the Prosecutor:

William Egbe
Peter Tafah
Sulaiman Khan
Adama Niane
Guilain Disengi Mugeyo
Amina Ibrahim

Defence Counsel:

A.R. Dovi
Ata-Quam-Dovi-Avouyi

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INTRODUCTION

1. The trial in this case commenced on 16 March 2009. On 17 March 2009, the Prosecution filed a Motion requesting the deposition of Witness QX, because of the witness' ill health and advanced age. According to the Prosecution, QX is a principal eyewitness of an attack on Tutsi refugees at the Ngoma Parish on 30 April 1994, an act with which the Accused is charged in the Indictment of 1 October 2007.
2. On 30 March 2009, the Prosecution withdrew the request for the deposition of Witness QX and instead made an oral application for the video-link testimony of Witness QX. The Defence responded that the request should be denied since the Prosecution had not adduced any material in support of its request.
3. On 1 April 2009, the Prosecution filed a confidential Annex in support of its request for the video-link testimony of Witness QX.
4. On 6 April 2009, the Chamber granted the Prosecution request for the video-link testimony of Witness QX.
5. On 14 April 2009, the Chamber was informed in court by representatives of the Witness and Victims Support Section ("WVSS") and by the Prosecution that Witness QX's physical state of health is extremely poor and that he is unable to travel the distance from his home to Kigali to testify by video-link. In order to hear the evidence of this principal witness, the Prosecution requested the Chamber to reconsider recording the witness' deposition from his home, in the presence of the Defence and the judges, or a representative of the Registry. The Defence did not object to the Prosecution request.
6. On 14 April 2009, the Chamber issued an oral decision to allow the deposition of Witness QX at the end of the proceedings.
7. On 15 April 2009, the Chamber observed that representatives of both the Prosecution and the Defence are presently in Rwanda for purposes of the video-link testimony of another Prosecution witness. In this regard, both Parties agreed that it would be propitious to hear the deposition of Witness QX, as soon as possible, while their representatives are still in Rwanda.

DISCUSSION

8. The Chamber has an inherent right to reconsider its own decisions, under exceptional circumstances, in view of new material considerations arising since the issuance of the decision.¹

¹ *Prosecutor v. Casimir Bizimungu, et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7 (citations omitted). *Barayagwiza*, Decision (Prosecutor's Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, paras. 4-5; *Bagosora et al.*, Decision on Reconsideration of

9. Witness QX is paralyzed and can move from his bed to any location only if carried or if placed in a wheel chair. In light of the recent information provided by the WVSS and the Prosecution, as confirmed by the medical affidavit of 1 April 2009, the Chamber finds that Witness QX's fragile health constitutes exceptional circumstances, under Rule 71 (A). The Chamber also observes that Witness QX is one of the last remaining witnesses to testify before the close of the Prosecution case, and considers that the deposition of Witness QX, who was an eye witness to the events at Ngoma Parish, serves the interest of justice. The Chamber therefore finds that Witness QX's testimony should be urgently taken by deposition, pursuant to Rule 71.

FOR THESE REASONS THE CHAMBER

REVOKES its Decision of 6 April 2009 for Witness QX to testify before the Chamber by video-link;

ORDERS that a deposition of the testimony of Witness QX be taken, pursuant to Rule 71 of the Rules, on Monday, 20 April 2009, or as soon as practicable thereafter, at the home of Witness QX, for use at trial, and that both an audio and visual recording of the deposition be made, and placed under seal; and hereby **DESIGNATES** Judge Joseph Masanche, of the International Criminal Tribunal of Rwanda, as Presiding Officer for this purpose;

DIRECTS the Registry, in consultation with the Parties and the Kigali Office of the International Criminal Tribunal for Rwanda, to make urgent arrangements for the deposition to take place, and to communicate the necessary details for the deposition to all concerned Parties;

REMINDS the Defence of its right, pursuant to Rule 71 (C) of the Rules, to attend the taking of the deposition and to cross-examine the witness.

Arusha, 15 April 2009

Arlette Ramaroson
Presiding Judge

[read and approved by]

Taghrid Hikmet
Judge

[absent at the time of signature]

Joseph Masanche
Judge

[Seal of the Tribunal]



Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11.