



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

OR: ENG

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

Registrar: Mr. Adama Dieng

Date: 27 April 2009

THE PROSECUTOR
v.
DOMINIQUE NTAWUKULILYAYO

Case No. ICTR-05-82-PT

JUDICIAL RECORDS/ARCHIVES
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DECISION ON PROSECUTOR'S REQUEST FOR AN ORDER TRANSFERRING
DETAINED WITNESSES PURSUANT TO RULE 90 *BIS*

Rules 73 and 90bis 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
Dorothée Le Fraper du Hellen

[Signature]

INTRODUCTION

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1. On 11 February 2009, the Prosecution filed a motion requesting that the Chamber order the temporary transfer of detained Witnesses AXV and BAF from the Republic of Rwanda to the UN Detention Facility no later than 30 March 2009,¹ the original date for commencement of trial in this case.²
2. On 26 March 2009, the Chamber ordered that commencement of trial be postponed to 4 May 2009.³
3. On 1 April 2009, the Chamber issued further orders to the Parties regarding the commencement of trial⁴ and noted that the Motion for the transfer of detained Prosecution witnesses did not provide the requisite verification from the Rwandan authorities as required under Rule 90bis (B).⁵ On 22 April 2009, the Prosecution filed the requisite verification.⁶
4. The Defence did not respond to the Motion.

DISCUSSION

5. Rule 90bis (A) of the Rules states that “any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.” According to Rule 90bis (B), a transfer order shall only be issued after prior verification that:

- (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; and

¹ *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-PT, The Prosecutor’s Request for an Order Transferring Detained Witnesses Pursuant to Rule 90bis of the Rules of Procedure and Evidence, 11 February 2009 (“Motion”).

² *Ntawukulilyayo*, T. 16 December 2008.

³ *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.

⁴ *Ntawukulilyayo*, Further Orders to the Parties Concerning Commencement of Trial, 1 April 2009.

⁵ For Rule 90bis (B) see *infra* para. 5. The Motion (para. 3) stated that the Prosecutor is awaiting the response from the Rwandan Minister of Justice. On 3 April 2009, the Prosecution provided a letter from the Rwandan Minister of Justice stating that Witness AXV and BAF were not required in Rwanda and could be transferred to the Tribunal. This letter however referred to the Witnesses being available from 30 March 2009, the original date scheduled for commencement of trial. The Prosecution however informed the Chamber that it had sent a new request to the Rwandan authorities requesting verification of the Witnesses’ availability from 4 May 2009. See Prosecution’s Compliance with Further Orders to the Parties Concerning Commencement of Trial filed on 3 April 2009. The Chamber issued a further order on 22 April 2009 which ordered the Prosecution to file, by close of business on 29 April 2009, the requisite Rule 90bis (B) verification for the transfer of the detained witnesses for commencement of trial on 4 May 2009. See Order Extending Time for Parties to Comply with Chamber’s Order of 1 April 2009 and Further Order to Prosecution Regarding Transfer of Detained Witnesses, 22 April 2009.

⁶ *Ntawukulilyayo*, Prosecution’s Compliance with Further Order to Prosecution Regarding Transfer of Detained Witnesses, 24 April 2009, Annex A.



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- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

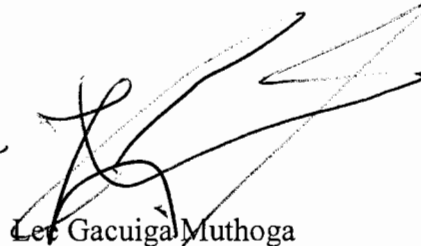
6. The Prosecution bears the burden of showing that the conditions set out in Rule 90*bis* (B) have been met. The Prosecution has provided the Chamber with a letter from the Rwandan Ministry of Justice dated 24 April 2009, which confirms that Witnesses AXV and BAF are available to testify before the Tribunal in accordance with the requirements of Rule 90*bis* (B).⁷ The Chamber notes that the aforementioned letter is in response to a letter from the Prosecution requesting confirmation of the Witnesses' availability from 4 May 2009.⁸ The Chamber is therefore satisfied that the Prosecution has discharged its burden under Rule 90*bis* (B).

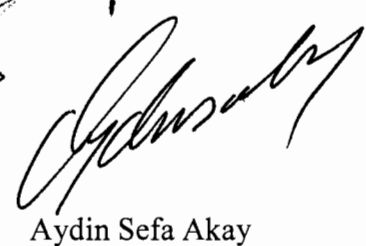
FOR THE ABOVE REASONS, THE CHAMBER

- I. GRANTS** the Motion;
- II. ORDERS**, pursuant to Rule 90*bis* (B), that Prosecution Witnesses AXV and BAF be transferred to Arusha, no later than 4 May 2009, until as soon as practically possible after each Witness' testimony has ended;
- III. REMINDS** the Registrar of his obligations under Rule 90*bis* (C) and (D) of the Rules to;
- A) transmit this Decision to the Government of the Republic of Rwanda and the Government of the United Republic of Tanzania;
 - B) ensure the proper conduct of the transfer, including the supervision of the Witnesses in the Tribunal's detention facilities;
 - C) remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State which may affect the timing of the temporary detention, and as soon as possible, inform the Chamber of any such change.
- IV. REQUESTS** the Government of the Republic of Rwanda, in accordance with this Decision and Rule 90*bis* (C) of the Rules, to liaise with the Government of the United Republic of Tanzania, the Registrar and the Witness and Victims Support Section, to take the necessary measures to implement the present Decision.

Arusha, 27 April 2009


Khalida Rachid Khan
Presiding Judge


Let Gacuiga Muthoga
Judge


Aydin Sefa Akay
Judge

[Seal of the Tribunal]



⁷ See *supra* footnote 6.

⁸ See *supra* footnote 5.