



UNITED NATIONS
NATIONS UNIES

ICTR-97-36A-T 877
20-5-2009
(877-874) Iwan
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before Judges: Florence Rita Arrey, Presiding
Mparany Mamy Richard Rajohnson
Aydin Sefa Akay

Registrar: Adama Dieng

Date: 20 May 2009

JUDICIAL RECORDS/ARCHIVES
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Iwan

THE PROSECUTOR

v.

Yussuf MUNYAKAZI

Case No. ICTR-97-36A-T

**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION FOR THE
DEPOSITION OF WITNESS BWW**

Rule 71 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Segun Jegede
Didace Nyirinkwaya

Counsel for the Defence

Jwani Timothy Mwaikusa
Barnabé Nekuie

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INTRODUCTION

1. The trial in this case commenced on 22 April 2009. On 15 May 2009, the Prosecution filed a confidential motion requesting the deposition of Witness BWW.¹ The Prosecutor seeks the deposition of the witness on the basis that he is in very bad health and annexed an affidavit dated 15 May 2009 from Dr. Marie Nyiraziraje, a medical doctor working at the WVSS Section, who examined Witness BWW at the hospital as well as his medical file. She states that the witness's health makes it impossible for him to travel.
2. On 19 May 2009, the Defense opposed the Motion.²
3. On 19 May 2009, the Prosecution filed a response and moved the Chamber for an expeditious ruling on the motion.³

DELIBERATIONS

4. Rule 71(A) of the Rules of Procedure and Evidence ("Rules" hereinafter) provides the Chamber with the discretion to grant the taking of depositions where exceptional circumstances exist and where it would be in the interests of justice. In addition, Rule 71(B) of the Rules stipulates certain requirements with which the request for deposition must comply: it must state the name and whereabouts of the witness, the date and place of deposition, a statement of matters for examination and of the exceptional circumstances justifying the deposition.

5. The Chamber accepts that the health condition of the witness, as attested by the annexed affidavit, constitutes, in the present case, an exceptional circumstance justifying the taking of a deposition.⁴

6. The Prosecutor submits that he is unable to disclose the name and address of the witness as required by Rule 71 of the Rules, due to the status of the witness as a protected witness, but that it already disclosed a prior witness statement via CD Rom in an unredacted format to the Defence on 16 March 2009. The Defence submits that the Prosecutor should have indicated that compulsory information in its confidential motion. The Chamber notes that the Prosecution should indeed have specifically included the identity of Witness BWW in its confidential motion, but that the prosecution disclosed witness statements under their own names on 16 March 2009.

7. Furthermore, the motion should include a statement of the matters on which the person is to be examined. The Prosecution submits that the witness is the principal eye witness of the allegations at paragraphs 8 and 13 of the Indictment, as he "was recruited by the accused into the *Interahamwe*", "underwent a grenades and rifles training conducted by ex-soldiers and gendarmes and communal policemen at Nyirandakunze in 1993", while the

¹ Prosecutor's Extremely Urgent Motion for the Deposition of Witness BWW, filed confidentially on 15 May 2009.

² Defence Response to the Prosecutor's Extremely Urgent Motion for the Deposition of Witness BWW, filed on 19 May 2009.

³ Prosecutor's Reply to Defence Response to the Prosecutor's Extremely Urgent Motion for the Deposition of Witness BWW, filed on 19 May 2009.

⁴ See eg. *Nahimana, Ngeze and Barayagwiza*, Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition (TC), 10 April 2003, para. 8; *Bagosora et al*, Decision on Prosecutor's Motion for Deposition of Witness OW (TC), 5 December 2001, para.12.

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"training was supervised by Tarek Aziz, who also worked with the accused". Furthermore, it is Witness BWW's evidence that "weapons these persons used both before and during the genocide were stored at Munyakazi's house" and that the witness "killed all the refugees at Shangi parish".

8. The Defence submits that the Prosecution is not saying that the case for the Prosecution depends entirely or even heavily on Witness BWW and further emphasizes that Witness BWW can only have little weight as the Prosecution states that he is an accomplice to the offences with which the accused is charged with. The Defence argues that the Prosecution's case will not collapse on account only of the deposition of Witness BWW not being taken, since the substantial issues that may be covered by BWW, being related to paragraphs 8 and 13 of the Indictment, have already been covered by the testimonies of already heard witnesses and should also be covered by future testimonies to be heard.

9. The Chamber leaves the discretion to the Prosecution over which witness to call and notes that this witness was already listed in its Pre-Trial Brief filed 30 March 2009. Furthermore, the Chamber is of the opinion that the Prosecution's Pre-Trial Brief provides sufficiently precise information of the matters for examination. However, the Chamber recalls its oral ruling of 28 April 2009, related to the obligation for the Prosecution to fulfill its disclosure obligations, by providing as soon as possible all witness statements in both languages, any judicial record pertaining to the remaining Prosecution witnesses as well as its revised witness list.⁵

10. The Chamber has been informed by the Prosecution that there might be a possibility to fly Witness BWW in fifteen minutes from Cyangugu to Kigali. In that event, the deposition will take place in Kigali.

ACCORDINGLY, THE CHAMBER

- I. GRANTS** the Prosecution's Extremely Urgent Motion for the Deposition of Witness BWW;
- II. ORDERS** that a deposition of Prosecution Witness BWW be taken pursuant to Rule 71 of the Rules at a safe house close to the current place of the residence of the witness or in Kigali, on 29 May 2009, 9.00 a.m. Rwanda time, for use at trial, and that both an audio and visual recording of the deposition be made and placed under seal;
- III. DESIGNATES** Judge Aydin Sefa Akay, of the International Criminal Tribunal of Rwanda, as Presiding Officer for this purpose;
- IV. DIRECTS** the Registry, in consultation with the parties and the Kigali Office of the International Criminal Tribunal of Rwanda, to make urgent

⁵ See Decision on the Prosecutor's Motion for Orders for Protective Measures for Victims and Witnesses, dated 3 March 2000.

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arrangements for the deposition to take place, and to communicate the necessary details for the deposition to all concerned parties;

- V. **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 Witness BWW; and
- VI. **ORDERS** the Prosecutor to comply confidentially with its disclosure obligations regarding the identity and whereabouts as well as all the unredacted supporting material on file for all his witnesses, as soon as possible and in any case on 22 May 2009 on the latest.

Arusha, 20 May 2009, done in English.



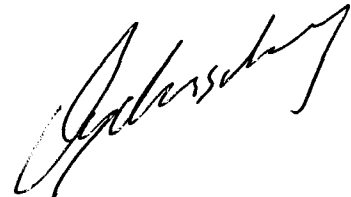
Florence Rita Arrey

Presiding Judge



Mparany Mamy Richard
Rajohnson

Judge



Aydin Sefa Akay

Judge

[Seal of the Tribunal]

