



UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Khalida Rachid Khan, presiding  
Aydin Sefa Akay  
*Sitting pursuant to Rule 15bis of the Rules of  
Procedure and Evidence*

**Registrar:** Mr. Adama Dieng

**Date:** 19 November 2009

**THE PROSECUTOR**  
v.  
**DOMINIQUE NTAWUKULILYAYO**

**Case No. ICTR-05-82-T**

**ORAL DECISION ON DEFENCE SUBMISSIONS REGARDING THE  
ACCUSED'S TESTIMONY**

*Rules 73ter, 89, 90, and 94bis 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

**Transcript Extract: 19 November 2009, pages 38-39**

Sitting under Rule 15 *bis* in the absence of Judge Muthoga.

MADAM PRESIDENT:

Here is an oral ruling on the Defence submissions that the Accused -- please take your seat -- that the Accused cannot be heard prior to the testimony of Witness EAD, who is not available until next year, and the proposed expert witnesses:

First, with regard to Witness EAD, the Chamber notes that the commencement of the Defence case was postponed by one week necessitating a second session which commenced on 17 November.

The Defence submits that Witness EAD was scheduled to testify during the first week of its case in September but that, due to the postponement, EAD is now unavailable until next year.

The Chamber considers that the Defence had ample time within which to file submissions regarding the reasons why Witness EAD cannot appear and the efforts it had made to obtain Witness EAD's appearance during this session. However, despite providing an order of appearance of the witnesses on 16 November, which included Witness EAD, the Defence only informed the Chamber yesterday that Witness EAD would be unavailable.

The Chamber recalls that, pursuant to Rule 73 *ter*, it may order the Defence to reduce the number of witnesses if it considers that an excessive number are being called to prove the same facts. The Chamber also has an authority, pursuant to Rule 54, to make such order as may be necessary for the conduct of the trial.

The Chamber notes Witness EAD's summary that she would testify on the Accused's good character, his arrest at Muzenga roadblock in June 1994, and that it was Bernadette Mukarurangwa who sent killers to Gisagara. However, the Chamber has already heard a number of witnesses on the Accused's good character, his arrest at Muzenga roadblock and Bernadette's alleged role in the events charged in the

indictment. It also appears from EAD's witness summary that she was not a witness to the events at Gisagara, Kabuye hill or any other events in relation to which the Accused is charged.

In view of the foregoing, the Chamber rules that if Witness EAD cannot appear to testify during this trial session, her testimony cannot -- will not be postponed to next year.

Second, with regard to the proposed expert witnesses, the Chamber notes that, despite knowing the scheduled dates for the second session of its case, the Defence did not fully comply with prescribed time limits under Rule 94 *bis* (A). It filed the CV of one proposed expert and the report and CV of another proposed expert just six days prior to the commencement of this trial session.

The Chamber, however, notes the difficulties which the Defence faced in obtaining the services of Mr. Ntampaka.

The Prosecution has indicated that it has expedited the filing of its Rule 94 *bis* (B) notice. The Chamber wishes to inform the Defence that its late filing with respect to its expert witnesses is not a factor which the Chamber will consider when deliberating on whether they should qualify the witnesses as expert witnesses. Rather, any decision regarding the proposed experts will be governed by Rule 89.

The Chamber recalls, as confirmed by the Appeals Chamber in *Seromba* and *Galic* cases, that the Accused does not have an absolute right to choose when to testify in this trial. Rather, Trial Chamber -- Trial Chambers have discretion pursuant to Rule 90 (F) to determine when an accused may testify in his own defence. However, this power must be exercised with caution.

In this case, the Chamber has thus far accommodated the Accused's choice of when to testify, and the Defence case is almost at an end. Considering the foregoing reasons and that the Defence has had ample opportunity to prepare the testimony of the Accused, the Chamber orders that the Defence should be prepared to call the Accused to the stand on Monday, 23 November in the event it is not possible to hear the proposed expert witnesses.

Thank you.