

ICTR-02-78-T
07-01-2010
(5201 - 5198)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before Judges: Taghrid Hikmet, Presiding
Seon Ki Park
Joseph Masanche

Registrar: Adama Dieng

Date: 7 January 2010

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON THE PROSECUTION MOTION FOR DISCLOSURE OF
DEFENCE WITNESS PARTICULARS**

Office of the Prosecutor:
Holo Makwaia
Althea Alexis Windsor
Cheikh Tidiane Mara
Lansana Dumbuya

Defence Counsel:
David Jacobs
Claver Sindayigaya
Marc Nerenberg

INTRODUCTION

1. The trial in this case commenced on 31 August 2009. After calling eleven witnesses over fourteen trial days, the Prosecution closed its case on 17 September 2009. The Defence case is scheduled to occur between 18 January and 12 February 2010.¹
2. On 3 September 2009, the Chamber granted protective measures for all of the Defence witnesses in this case.² The Chamber ordered that identifying information withheld in accordance with the protective measures be disclosed to the Prosecution thirty days prior to the commencement of the Defence case, in order to allow adequate time for the preparation of the Prosecution as required by Rule 69(C) of the Rules of Procedure and Evidence ("the Rules").³
3. On 28 September 2009, the Chamber issued a Scheduling Order, instructing the Defence to file its Pre-Defence Brief, including the proposed order of appearance of its witnesses, by 18 December 2009.⁴ The Chamber ordered the Defence to disclose witness identifying information to the Prosecution by the same date.⁵
4. On 18 December 2009, the Defence filed a Pre-Defence Brief, pursuant to Rule 73ter of the Rules, as well as Personal Identification Sheets for 31 protected witnesses.⁶ The Pre-Defence Brief included a proposed order of appearance for 35 Defence witnesses, including 32 protected and three unprotected witnesses.⁷
5. On 22 December 2009, the Prosecution filed a motion, requesting that the Chamber order the Defence to disclose identifying information for the witnesses it intends to call at trial as well as the proposed order of appearance of the Defence witnesses.⁸
6. On 24 December 2009, the Defence filed a response to the Prosecution motion, submitting that it had already disclosed the requested information and asking the Chamber dismiss the motion in its entirety.⁹
7. The Prosecution did not file a reply.

¹ Scheduling Order following the Status Conference held on 17 September 2009 (TC), 28 September 2009, Order I.

² Decision on the Defence Motion for Witness Protection Measures (TC), 3 September 2009.

³ Decision on the Defence Motion for Witness Protection Measures (TC), 3 September 2009, para. X.

⁴ Scheduling Order following the Status Conference held on 17 September 2009 (TC), 28 September 2009, Order II.

⁵ Scheduling Order following the Status Conference held on 17 September 2009 (TC), 28 September 2009, Order III.

⁶ Pre-Defence Brief, filed on 18 December 2009; Strictly Confidential Disclosure, filed on 18 December 2009.

⁷ Pre-Defence Brief, filed on 18 December 2009, pp. 19-20.

⁸ Prosecutor's Request for Disclosure of Particulars of Defence Witnesses Pursuant to Rule 73 of Procedure and Evidence, filed on 22 December 2009, paras. 7, 9.

⁹ Response to the 'Prosecutor's Request for Disclosure of Particulars of Defence Witnesses Pursuant to Rule 73 of Procedure and Evidence' of 22 December 2009, filed on 24 December 2009.

DELIBERATIONS

8. Rule 69(C) of the Rules provides that the identity of a victim or witness, withheld pursuant to Rule 69(A), shall be disclosed to the opposing party within such time as determined by the Trial Chamber to allow adequate time for preparation of the Prosecution or the Defence. In this case, the Trial Chamber ordered the Defence to disclose witness identifying information to the Prosecution no later than 18 December 2009.¹⁰

9. The Trial Chamber notes that the Defence filed Personal Identification Sheets ("PIS") for 31 protected witnesses on 18 December 2009.¹¹ The Defence also provided names and will-say statements for three unprotected witnesses.¹² Of the 31 PISs disclosed by the Defence, however, twelve are incomplete. Indeed, the Defence has provided only names for Witnesses KG49 and KG75.¹³ Moreover, the Defence has not provided a PIS for Witness KG16.

10. The Chamber recalls that, in the cover letter to its PISs, the Defence stated that, "where the information is not complete on the form, such is because the Defence has not yet obtained that information. For each such case, completed Personal Information Sheets shall be disclosed as soon as the missing information becomes available."¹⁴ The Chamber finds that the Defence has had adequate time to obtain the requested information and directs the Defence to immediately disclose all information missing from those PISs to the Prosecution.

11. With respect to the Prosecution's request for the order of the Defence witnesses, the Chamber notes that the Defence provided a proposed order of appearance on pages 19 and 20 of the Pre-Defence Brief.¹⁵ Thus, the Chamber finds that the Prosecution request is without merit.

¹⁰ Scheduling Order following the Status Conference held on 17 September 2009 (TC), 28 September 2009, Order III.

¹¹ Strictly Confidential Disclosure, filed on 18 December 2009.

¹² Pre-Defence Brief, filed on 18 December 2009, pp. 6-7, 18-19.

¹³ Strictly Confidential Disclosure, filed on 18 December 2009, PIS: KG49, PIS: KG75.

¹⁴ Strictly Confidential Disclosure, filed on 18 December 2009, Cover Letter.

¹⁵ Pre-Defence Brief, filed on 18 December 2009, pp. 19-20.

FOR THESE REASONS, the Chamber

ORDERS the Defence to immediately disclose the following information for witness KG16:


- a. Full name (including the family name, first name, nicknames (where applicable) and the assigned pseudonym);
- b. Date and place of birth, including *cellule*, *secteur*, *commune* and *préfecture*;
- c. Full names of both parents;
- d. Residence, including *cellule*, *secteur*, *commune* and *préfecture*, and occupation in 1994;
- e. Current city and country of residence;
- f. Religion;
- g. Current occupation.

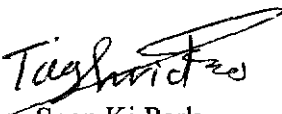
ORDERS the Defence to immediately disclose all information, missing from the PISs, that is for witnesses KG1, KG8, KG11, KG26, KG28, KG44, KG46, KG49, KG59, KG70, KG73 and KG75; and

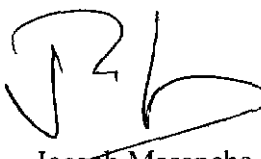
DISMISSES the remainder of the Prosecution Motion.

Arusha, 7 January 2010

[read and approved by]


Taghriddin Hikmet
Presiding Judge


Seon Ki Park
Judge
[absent at the time
of signature]


Joseph Masanche
Judge

