



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T 2996
03-02-2010 1094
(2996 - 2991)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 03 February 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

PUBLIC

JUDICIAL RECORDS/ARCHIVES
RECEIVED
2010 FEB -3 P 5: 39
Solomon

ORDER ON DEFENCE DISCLOSURE

Office of the Prosecution:

Paul Ng'arua
Elvis Bazawule
Memory Maposa
Ndeye Marie Ka

Defence Counsel

Vincent Courcelle-Labrousse, Lead Counsel
Philippe Larochelle, Co-Counsel

88

2995

INTRODUCTION

1. At a Pre-Trial Conference held on 13 October 2009, the Witness and Victims Support Section (“WVSS”) informed the parties that in order to arrange for the appearance of witnesses at Trial it required eight weeks notice of the identity of witnesses and contact details of prospective witnesses.¹
2. The first session in this case opened on 9 November 2009 and closed on 17 December 2009.
3. On 14 December 2009, the Trial Chamber observed that the Prosecution was unlikely to complete its case before the close of the session on 17 December 2009. It therefore proposed that the parties sit on 4 and 5 February 2010 to complete the Prosecution case.²
4. In response, Counsel for the Defence confirmed that he believed it was entirely possible to hear the two remaining Prosecution witnesses in February, and continue with their testimony on 29 March 2009 if necessary, and then transition directly into the Defence case. The Defence affirmed that “there’s no difficulty for us as far as that is concerned.”³
5. On 15 December 2009, the Trial Chamber commended the Defence for “for making the big concession not to require a break between the closing of the Prosecution case and the beginning of the Defence case.”⁴ Due to scheduling conflicts, the Presiding Judge announced that the final Prosecution witness would not be heard on 4-5 February 2010 as agreed the previous day, but on 29 March 2010 instead.⁵ The parties did not object, and the Trial Chamber then scheduled a Pre-Defence Conference for 5 March 2010.⁶

¹ T. 13 October 2010, p. 34.

² T. 14 December 2009, p. 4.

³ T. 14 December 2009, p. 5.

⁴ T. 15 December 2009, p. 45 (ICS).

⁵ T. 15 December 2009, pp. 45-46 (ICS).

⁶ T. 17 December, pp. 16-17.

88

6. On 25 January 2010, the Trial Chamber received a copy of correspondence between the Prosecution and the Defence regarding Defence disclosure matters in which Co-Counsel for the Defence expressed surprise at the Prosecutor for seeking to obtain documents from the Defence. The Defence stated that it can only be ordered to disclose the identity and statements of its own witnesses after the close of the Prosecution's case pursuant to Rule 73 *ter* (B).⁷
7. On 27 January 2010, the Trial Chamber received a copy of correspondence between WVSS and the Defence in which WVSS reminded the Defence that it required "information pertaining to witnesses who will be called to testify at least 2 months prior to the commencement of the trial in order to make the necessary arrangements for the travel and arrival in Arusha in a timely manner."⁸
8. On 27 January 2010, the Prosecution filed a Motion requesting that the Trial Chamber move forward the date of the scheduled Pre-Defence Conference to address issues of Defence disclosure, or in the alternative, that the Trial Chamber Order the Defence to file a list of witnesses and witness summaries by 8 February 2010.⁹
9. On 28 January 2010, the Defence filed a response in which it stated that it would communicate a Pre-Defence Brief to the Prosecution, including a list of witnesses it intends to call, identifying information about the witnesses, and witness statements, on 1 March 2010.¹⁰
10. The Prosecution did not file a Reply.

DELIBERATIONS

Applicable Law

⁷ Email from Philippe LaRochelle to Paul Ng'arua, 25 January 2010.

⁸ Emails from Sera A. Attika and Joseph Essombe-Edimo of WVSS to Defence Counsels dated 12, 20 and 27 January 2010.

⁹ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44-T, Prosecutor's Urgent Motion Requesting for a Pre-Defence Conference at the Earliest Opportunity to Avert a Scheduling Crisis and Wastage of Time ("Motion"), 27 January 2010.

¹⁰ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44-T, Nzabonimana's Response to "Prosecutor's Urgent Motion Requesting for a Pre Defence Conference at the earlier Opportunity to Avert a Scheduling Crisis and Wastage of Time" ("Response"), 28 January 2010.

11. Rule 73 *ter* (B) provides that

(B) At that Conference, the Trial Chamber or a Judge, designated from among its members, may order that the Defence, before the commencement of its case but after the close of the case for the prosecution, file the following:

- i) Admissions by the parties and a statement of other matters which are not in dispute;
- ii) A statement of contested matters of fact and law;
- iii) A list of witnesses the Defence intends to call with:
 - (a) The name or pseudonym of each witness;
 - (b) A summary of the facts on which each witness will testify;
 - (c) The points in the indictment as to which each witness will testify; and
 - (d) The estimated length of time required for each witness;
- (iv) A list of exhibits the Defence intends to offer in its case, stating where possible whether or not the Prosecutor has any objection as to authenticity.

The Trial Chamber or the Judge may order the Defence to provide the Trial Chamber and the Prosecutor with copies of the written statements of each witness whom the Defence intends to call to testify.

12. The Trial Chamber recognises that Rule 73 *ter* B specifically refers to Defence disclosure that the Trial Chamber may order "...after the close of the case for the Prosecution." However, the Prosecution requires time to prepare the cross-examination of Defence witnesses and in order to do so it must have a certain amount of information about these witnesses prior to the start of the Defence case. Thus, the Trial Chamber considers that in agreeing to transition directly from the Prosecution case into the Defence case, the Defence implicitly waived its right to begin disclosing this information only after the close of the Prosecution case.

13. The Trial Chamber notes with satisfaction that in its Response to this Motion, the Defence has agreed to disclose information regarding its witnesses to the Prosecution prior to the close of the Prosecution case. However, it considers that the disclosure date proposed by the Defence does not provide the Prosecution with sufficient time to conduct its investigations, nor does it provide the Trial Chamber with sufficient time to prepare for the Pre-Defence Conference scheduled for 5

March 2010. The Trial Chamber is of the view that the Defence has had adequate time to prepare its case, and therefore that it should be in a position to disclose information about its witnesses by 22 February 2010.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

- I. **ORDERS** that the Defence file by close of business on 22 February 2010 the following:
- a. Admissions by the parties and a statement of other matters which are not in dispute;
 - b. A statement of contested matters of fact and law;
 - c. A list of witnesses the Defence intends to call with:
 - (i) The name or pseudonym of each witness;
 - (ii) A summary of the facts on which each witness will testify;
 - (iii) The points in the indictment as to which each witness will testify; and
 - (iv) The estimated length of time required for each witness;
 - (v) A list of exhibits the Defence intends to offer in its case, stating where possible whether or not the Prosecutor has any objection as to authenticity.
- II. **ORDERS** the Defence to provide the Trial Chamber and the Prosecutor with copies of the written statements and identifying information of each witness whom the Defence intends to call to testify.
- III. **ADDITIONALLY NOTES** that provisions of the preceding paragraph notwithstanding, the Defense is obliged to provide the WVSS by 8 February 2010 with all information which would allow the latter to ensure timely arrival of all Defence witnesses by the time of their testimony.

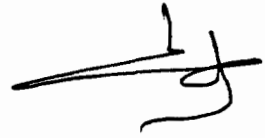
Arusha, 03 February 2010, done in English.



Solomy Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

