



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-00-61-1
09-02-2010
(3463 - 3461)

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 9 February 2010

THE PROSECUTOR

v.

Jean-Baptiste GATETE

Case No. ICTR-2000-61-T

1 2010 FEB - 9 P 5: 42
JUDICIAL RECORDS ARCHIVES
RECEIVED

ORDER VARYING SCHEDULING ORDER OF 19 NOVEMBER 2009

Rules 54 and 90bis (B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

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For the Accused:

Marie-Pierre Poulain
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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber III, composed of Judges Khalida Rachid Khan, Lee Gacuiga Muthoga, and Aydin Sefa Akay ("Chamber");

NOTING that the trial in this case commenced on 20 October 2009 and the Prosecution case closed on 16 November 2009;¹

RECALLING that the Defence case is scheduled to commence on 2 March 2010 and will run, if necessary, until 31 March 2010, including time for cross-examination of Defence witnesses by the Prosecution;²

RECALLING that the Chamber ordered the Defence to file any motion for the transfer of detained witnesses pursuant to Rule 90bis (B) no later than 8 February 2010;³

RECALLING FURTHER that Rule 90bis (B) of the Rules of Procedure and Evidence ("Rules") provides that the transfer order of detained witnesses shall be issued by a Judge or a Trial Chamber only after prior verification that the following conditions have been met: (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 (ii) transfer of the witness does not extend the period of his detention as foreseen by the requested State ("Rule 90bis (B) confirmation");

CONSIDERING the Motion filed by the Defence on 5 February 2010,⁴ informing the Chamber that (i) it has submitted a request to the Minister of Justice of the Republic of Rwanda pursuant to Rule 90bis (B) on 1 February 2010 in order to ensure the availability of seven detained witnesses it intends to call to testify;⁵ (ii) it has not yet received a response from the Rwandan Government to confirm the availability of the detained witnesses; (iii) authorization to visit Witness LA36 is still pending; and (iv) security clearance has not yet been granted regarding the authorized visit of Witness LA47;⁶

NOTING that the Defence requested the Rule 90bis (B) confirmation from the Rwandan Government only on 1 February 2010, whereas the Chamber had ordered the filing of any motion pursuant to Rule 90bis (B) no later than 8 February 2010;

CONSIDERING FURTHER the Defence request to vary the Chamber's Scheduling Order of 19 November 2009 to order that any motion for the transfer of detained witnesses be filed following receipt of the Rule 90bis (B) confirmation from the Rwandan Government, and completion of the interviews of the two remaining detained witnesses, and in any event by 19 February 2010;⁷

¹ *The Prosecutor v. Jean-Baptiste Gatete*, Case No. ICTR-00-61-PT, Scheduling Order, 30 September 2009. The Prosecution case adjourned for one week from 23 to 30 October 2009.

² Scheduling Order and Order for the Defence to Reduce its List of Witnesses, 2 February 2010.

³ Scheduling Order Regarding Commencement of the Defence Case, 19 November 2009 ("Scheduling Order of 19 November 2009").

⁴ Defence Motion Regarding the Transfer of Detained Witnesses Pursuant to Rule 90bis of the Rules of Procedure and Evidence, 5 February 2010 ("Defence Motion").

⁵ Confidential Annex II to the Defence Motion.

⁶ Defence Motion, para. 6.

⁷ *Ibid*, para. 7.



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NOTING the Prosecution's Response filed on 5 February 2010, taking no position on the merits of the Defence Motion, but submitting that if the relief is granted, it ought to be premised on the current trial schedule;⁸

CONSIDERING that the Chamber ordered, pursuant to Rules 54 and 73ter (D) of the Rules, that the Defence review its Witness List filed on 29 January 2010 with a view to reducing it and file, by close of business on 19 February 2010, a revised Witness List;⁹ and

RECALLING the Chamber's authority, pursuant to Rule 54 of the Rules, to issue such orders as may be necessary for the conduct of the trial,

THE CHAMBER HEREBY

GRANTS the Defence Motion;

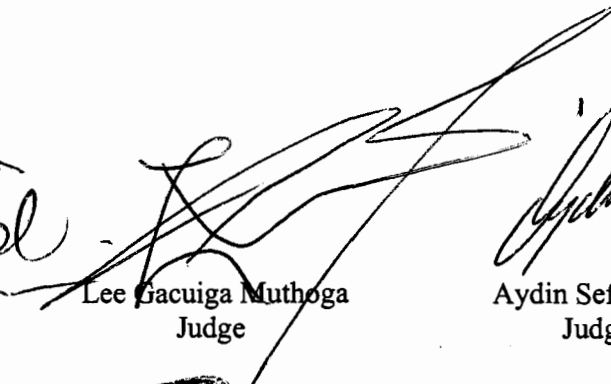
VARIES the Scheduling Order of 19 November 2009; and

ORDERS that the Defence file any motion for the transfer of detained witnesses pursuant to Rule 90bis (B) as soon as it receives the Rule 90bis (B) confirmation, and in any event no later than 19 February 2010.

Arusha, 9 February 2010



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Aydin Sefa Akay
Judge

[Seal of the Tribunal]



⁸ Prosecutor's Reply to the Defence Motion Regarding the Transfer of Detained Witnesses, 5 February 2010.

⁹ Scheduling Order and Order for the Defence to Reduce its List of Witnesses, 2 February 2010. The Defence filed its Witness List on 29 January 2010 pursuant to the Scheduling Order of 19 November 2009 (Witness List and Summary of Facts, Confidential Annex I to the Pre-Defence Brief of Jean-Baptiste Gatete).