



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
7-4-2010
(50756-50753)

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HM

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 7 April 2010

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION TO POSTPONE OR COMPEL
THE TESTIMONY OF CASIMIR BIZIMUNGU**

*Article 20 of the Statute and Rules 54, 79 and 90(E) of the Rules of Procedure and
Evidence*

Office of the Prosecution:
Don Webster
Saidou N'Dow
Sunkarie Ballah-Conteh
Takeh Sendze
Jean-Baptiste Nsanzimfura

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. On 12 February 2010, Joseph Nzirorera filed a motion seeking an order to postpone the testimony of Casimir Bizimungu, an accused whose case is currently pending before the Tribunal, until judgement in that case or, alternatively, an order compelling his earlier testimony.¹ Casimir Bizimungu opposes the Motion.² The Prosecution does not oppose the Motion but expresses a preference for postponement over compelling Bizimungu's testimony.³

DELIBERATIONS

2. Joseph Nzirorera asserts that the anticipated testimony of Casimir Bizimungu is important to his case as Bizimungu is expected to refute the testimony adduced by various prosecution witnesses and to address diverse allegations in the Indictment.⁴ Nzirorera states that his Lead Counsel has spoken with Lead Counsel for Bizimungu and that Bizimungu has agreed to testify on his behalf concerning these matters, provided that his testimony is delayed until after his judgment.⁵ Consequently, Nzirorera requests an order that Bizimungu be permitted to testify once his judgment has been rendered, even if Nzirorera's Defence is otherwise concluded.⁶

3. Casimir Bizimungu denies that he has agreed to testify concerning the particular events identified by Joseph Nzirorera in the Motion.⁷ Contrary to Nzirorera's assertions, Bizimungu states that he only briefly discussed with Nzirorera himself the possibility of testifying and that he or his Counsel has not met with Counsel for Nzirorera to discuss the substance or specifics of his proposed testimony.⁸ The Chamber notes that although Bizimungu may have special knowledge because he was President of the MRND in

¹ Joseph Nzirorera's Motion to Postpone or Compel Testimony of Casimir Bizimungu, filed on 12 February 2010.

² Réponse du Dr. Casimir Bizimungu à la Requête intitulée: Joseph Nzirorera's motion to postpone or compel testimony of Casimir Bizimungu, filed on 17 February 2010 et Réponse amendée du Dr. Casimir Bizimungu à la Requête intitulée: Joseph Nzirorera's motion to postpone or compel testimony of Casimir Bizimungu, filed on 18 February 2010 ("Réponse amendée de Casimir Bizimungu").

³ Prosecutor's Response to Joseph Nzirorera's Motion for Postpone or Compel the Testimony of Casimir Bizimungu, filed on 15 February 2010.

⁴ Motion, paras. 9-27. See Prosecution Witnesses GBU, BTH, ZF, AJY, G, and HH and Paragraphs 6(ii), 27, 51, 62.2 and 62.8 of the Indictment.

⁵ Motion, paras. 4-5.

⁶ Motion, paras. 1, 2, 6 and 32.

⁷ Bizimungu's Response of 18 February 2010, paras. 5-6 and 20.

⁸ *Ibid.*, paras. 6-7.

Ruhengeri *préfecture* and was Minister of Health in the Interim Government, the subject matters on which Nzirorera would require him to testify have been addressed by several other witnesses called by Nzirorera⁹. Moreover, the Chamber has noted the allegation, expressed in accusatory terms,¹⁰ that this application was made without adequate consultation. This has raised doubts about the accuracy of Nzirorera's representations as to the content of Bizimungu's testimony. The Chamber considers, however, that at best, his testimony would be repetitive and is not necessary for a fair trial.

4. The Chamber is vested with discretion, and is the authority best placed, to address matters relating to trial management, including whether it is appropriate to postpone or adjourn the proceedings at the request of a party.¹¹ This discretion is grounded in the Trial Chamber's organic familiarity with the day-to-day conduct of the trial and the practical demands of the case.¹² Time and resource constraints exist in all judicial institutions and it is legitimate for a Trial Chamber to ensure that the proceedings do not suffer undue delays and that the trial is completed within a reasonable time, provided that the exercise of this discretion does not encroach on fair trial rights.¹³

5. The unequivocal refusal of Casimir Bizimungu to testify voluntarily before the completion of his case would imply an indefinite delay until after both the delivery of trial judgement and the completion of any appellate proceedings. Current calendaring indicates that the trial judgement in this case will precede this eventuality. Postponing Bizimungu's testimony indefinitely must therefore result in the delay of the completion of this trial for an indefinite and uncertain period. This would constitute an undue delay that cannot be justified and would not serve the interests of justice. The application to postpone is denied.

⁹ See Witness 2, Witness 6, Witness 16, Witness 17, GAP, Épimaque Nshizirungu, Augustin Bizimungu, Juvénal Kajelijeli, Joseph Karorero, Dick Prudence Munyeshuli, Assiel Ndisetse, Eliezier Niyitegeka, Jean-Damascène Niyoyita, Dismas Nzanana, Witness DB11-2, Michel Bakuzakundi, Théogene Bamporeye (subject to cross-examination), Dominic Gatsimbanyi (subject to cross-examination), and Alphonse Ntilivamunda (subject to cross-examination).

¹⁰ Réponse amendée de Casimir Bizimungu, paras. 4, 7-8.

¹¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Interlocutory Appeal (AC), 28 April 2006, paras. 7-8.

¹² *Karemera et al.*, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to be Present at Trial (AC), 5 October 2007, para. 8; *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.8, Decision on Prosecution's Appeal Against the Trial Chamber's Order Regarding the Resumption of Proceedings (AC), 16 September 2008.

¹³ *Šešelj*, Decision of 16 September 2008, para. 3; *Karemera et al.*, Decision of 28 April 2006, para. 7. *The Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-01-64-T, Judgement, 7 July 2006, para. 19.


6. In the alternative, Joseph Nzirorera requests that the Chamber compel Bizimungu to testify, invoking the protections for his fair trial rights provided by Rules 90 (E) and 79.¹⁴ Bizimungu submits that these rules do not provide adequate protection and requests that the order be denied.

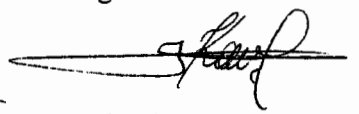
7. The Chamber recalls that Rule 90 (E) provides protection against self incrimination. Moreover, the submission of Bizimungu that self incrimination is not the only right guaranteed by article 20 of the Statute which may be infringed if he is compelled to testify has not been rebutted. In particular he fears that he may be required to testify on matters that have been excluded from his own trial, and that such testimony could provide support for applications to reopen his case. Similarly, Rule 79 provides for the testimony to be given in closed session, and does not afford any power to limit the content of the testimony. The chamber accepts the contention that any order to compel Bizimungu to testify before the completion of his case has the capacity to prejudice his fair trial rights. Bearing in mind the finding that this testimony is not essential to Nzirorera's fair trial rights, the Chamber is satisfied that on balance the interests of justice would require that the application to compel Bizimungu to testify before the completion of his case be denied.

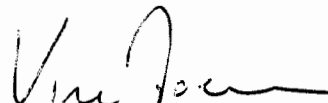
FOR THESE REASONS, THE CHAMBER

DENIES Joseph Nzirorera's Motion in its entirety.

Arusha, 7 April 2010, done in English.


Dennis C.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



¹⁴ Motion, paras. 1, 7 and 28-32.