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NATIONS UNIES

ICTR-98-44-T
7-4-2010
(50761 - 50757)

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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

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR VARIATION OF HIS
WITNESS LIST**

Rule 73 ter of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
Saidou N'Dow
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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

INTRODUCTION

1. In a motion filed on 1 February 2010, Joseph Nzirorera seeks leave to vary his witness list by adding two new witnesses.¹ The Prosecution has not filed a response.

DELIBERATION

2. Rule 73 *ter* (E) of the Rules of Procedure and Evidence provides that, “[a]fter commencement of the Defence case, the Defence, if it considers it to be in the interests of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.” Trial Chambers have allowed either party to vary its witness list upon a showing of good cause where the requested variance is in the interests of justice.² Relevant factors include the materiality and probative value of the testimony in relation to existing witnesses and allegations in the Indictment, the complexity of the case, prejudice to the opposing party, justifications for the late addition of witnesses, and delays in the proceedings.³

3. As a preliminary matter, Joseph Nzirorera filed the list of his remaining witnesses.⁴ The Chamber notes that the list includes persons who are not authorised to be on the witness list as live witnesses⁵ and who will not be permitted to testify unless leave is sought and granted in accordance with Rule 73 *ter* (E). The names are: Samuel Imanishimwe, Aloys Ntabakuze, Pierre Nsengiyumva, Ibrahim Nzarigezahe, Séraphin Twahirwa, Charles Bandora, François Gahigi, Jean-Claude Seyoboka, Aloys Zirarushya, Pierre Célestin Rwigema, Pascal Mutuyeyezu, Jean-Baptiste Nemezahizi, André Bizimana, Théophile Gakara, Moussa Zari

¹ Joseph Nzirorera's Motion to Vary his Witness List, filed on 1 February 2010.

² *The Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50, Decision on Casimir Bizimungu's Motion to vary Witness List; and to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony (TC), 1 May 2008, para. 13; *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Prosecutor's Motion to Vary its Witness List (TC), 2 October 2006, para. 3; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E) (TC), 26 June 2003, para. 13; *The Prosecutor v. Musema*, Case No. ICTR. 96-13-T, Decision on the Prosecutor's Request for Leave to Call Six New Witnesses (TC), 20 April 1999, paras. 4, 13.

³ *Bizimungu et al.*, Decision on Casimir Bizimungu's Motion to vary Witness List; and to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony, 1 May 2008, para. 13; *Bagosora et al.*, Decision On Bagosora Motion To Present Additional Witnesses And Vary Its Witness List, 17 November 2006, para. 2; *Prosecutor v. Mpambara*, Case No. ICTR-2001-65-T, Decision on the Prosecution's Request to Add Witness AHY (TC), 27 September 2005, para. 4.

⁴ Joseph Nzirorera's expected order of appearance for remaining witnesses, filed on 5 March 2010 and amended on 17 March 2010-03-1.

⁵ Joseph Nzirorera's Confidential Final Witness List, filed on 16 October 2009. These witnesses appears in a section “F. Witness rejected for 92 *bis* (to be called *if Permitted*)” (emphasis added).

Banganirubusa, Jean-Baptiste Baligendere and Cyprien Munyampundu. The Chamber recalls that it has previously rejected the admission of their statements in lieu of live testimony.⁶

4. The Chamber considers that Joseph Nzirorera has demonstrated good cause for the submission of this motion at this stage of the proceedings. The two witnesses were on Matthieu Ngirumpatse's witness list but on 28 January 2010, Ngirumpatse's Defence informed Lead Counsel for Nzirorera that they would not be on their final witness list.⁷

Jean-Baptiste Ndalihoranye

5. Joseph Nzirorera submits that Jean-Baptiste Ndalihoranye is a former MRND leader who was a member of the MRND préfectoral committee from Gisenyi and a member of the MRND Political Bureau. Nzirorera states that Ndalihoranye presided over the meeting of the Political Bureau in December 1992 in the absence of Matthieu Ngirumpatse when it was decided not to censure Léon Mugesera for his speech in Kabaya. Nzirorera further submits that Ndalihoranye will explain what transpired at the meeting and why that decision was taken and will refute the testimony of Witness UB concerning the position of the MRND.⁸ Nzirorera also alleges that Ndalihoranye can testify that no national MRND rally took place in Umuganda stadium in October 1993 and that the MRND had no plan to exterminate Tutsis, that no speeches calling for the extermination of Tutsis were made at MRND rallies and that the MRND had no control over those who committed massacres after 6 April 1994.⁹

6. The Chamber considers that hearing the testimony of Jean-Baptiste Ndalihoranye would be in the interests of justice,¹⁰ because of its materiality to the allegations in the indictment and possible probative value.

Juvénal Rugambarara

7. Joseph Nzirorera submits that Juvénal Rugambarara, former *bourgmestre* of Bicumbi, Kigali-Rural *préfecture*, will refute the testimony of Prosecution Witness GOB that on 29 November 1992, at a MRND Rally in Gitarama Stadium, in a private conversation at

⁶ See *Karemera et al.*, Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Testimony, 15 July 2009.

⁷ Motion, paras 2-3.

⁸ Motion, para. 6.

⁹ Motion, paras. 7-8.

¹⁰ *Bizimungu et al.*, Decision on Casimir Bizimungu's Motion to vary Witness List; and to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony (TC), 1 May 2008, para. 13; *Karemera et al.*, Decision on Prosecutor's Motion to Vary its Witness List (TC), 2 October 2006, para. 3; *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E) (TC), 26 June 2003, para. 13. *Musema*, Decision on the Prosecutor's Request for Leave to Call Six New Witnesses (TC), 20 April 1999, paras. 4, 13.

which Rugambarara was also present, Mathieu Ngirumpatse stated that Mugesera was moving ahead of their plan and had made his statement too early, whereas Rugambarara submits he never attended that rally. Nzirorera submits that Rugambarara will also testify that Nzirorera never expressed any hatred for Tutsis.¹¹ According to Nzirorera, Rugambarara will also refute adjudicated fact 145.¹² The Chamber considers that hearing the testimony of Juvénal Rugambarara would be in the interests of justice,¹³ because of its materiality to the allegations in the indictment and possible probative value.

8. The Chamber considers that Joseph Nzirorera's application to add two witnesses will not have an adverse impact on the trial because he has dropped a couple of witnesses already. The addition of Jean-Baptiste Ndalihoranye and Juvénal Rugambarara will consequently not exceed the maximum number of witnesses that Joseph Nzirorera has been allowed to call for his defence.

9. The chamber therefore orders that the witness list be varied by the addition of Jean-Baptiste Ndalihoranye and Juvénal Rugambarara.

Scheduling

10. After considering Joseph Nzirorera's filings of 5 and 17 March 2010, the Chamber notes that it is to be anticipated that six witnesses will not be available to testify consecutively with the other witnesses of Nzirorera. The Chamber will not permit the case to remain open indefinitely to accommodate witnesses whose availability is uncertain. Save for these witnesses, Nzirorera will have concluded the presentation of his case on or about 31 May 2010. When the remaining 6 witnesses scheduled to testify on the behalf of Nzirorera are available, Nzirorera should apply to the Chamber to accommodate their testimony. Consequently, Mathieu Ngirumpatse should be ready to start the presentation of his case on or about 1 June 2010.

11. Nzirorera should liaise with the Witnesses and Victims support Section ("WVSS") for Jean-Baptiste Ndalihoranye and Juvénal Rugambarara to testify by the end of May 2010.

¹¹ Motion, paras. 9-10.

¹² Motion, para. 11.

¹³ *Bizimungu et al.*, Decision on Casimir Bizimungu's Motion to vary Witness List; and to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony (TC), 1 May 2008, para. 13; *Karemera et al.*, Decision on Prosecutor's Motion to Vary its Witness List (TC), 2 October 2006, para. 3; *Bagosora et al.*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 bis (E) (TC), 26 June 2003, para. 13. *Musema*, Decision on the Prosecutor's Request for Leave to Call Six New Witnesses (TC), 20 April 1999, paras. 4, 13.

FOR THESE REASONS, THE CHAMBER


GRANTS Joseph Nzirorera's Motion to vary his witness list;


ORDERS that Jean-Baptiste Ndalihoranye and Juvénal Rugambarara testify consecutively with the other witnesses of Joseph Nzirorera;

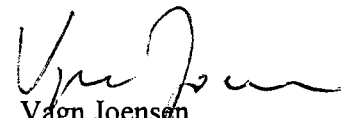
ORDERS that Joseph Nzirorera disclose to the other Parties in this trial the identifying information of Jean-Baptiste Ndalihoranye and Juvénal Rugambarara; and

ORDERS Matthieu Ngirumpatse to be ready to start the presentation of his case on 1 June 2010.

Arusha, 7 April 2010 done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

