



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T
19-05-2010
(4349 - 4347)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Ivan

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 19 May 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

JUDICIAL RECORDS ARCHIVES
2010 MAY 19 14 33 30

**DECISION ON DEFENCE MOTION FOR VIDEO-LINK TESTIMONY OF
WITNESS T7**

Rules 54 & 71 (D) of the Rules of Procedure and Evidence

Office of the Prosecution

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INTRODUCTION

1. On 14 April 2010, the Defence for Nzabonimana filed a Motion requesting that Witness T7 be permitted to testify via video-link from Europe.¹ The Prosecution did not object to the Motion.²
2. On 16 April 2010, the Trial Chamber, through its Legal Officer, sought clarification from the Defence regarding the Doctor's letter appended to the Motion. This letter dated 4 March 2010 indicated that the witness' condition was temporary.
3. On 23 April 2010, the Defence filed a second document from the same doctor, dated the same day as the first letter and signed and stamped in exactly the same place as the first one. While there was an additional final sentence in this second document stating that the witness could not travel by land or air, it added no information regarding the temporary nature of the witness' condition.
4. On 27 April 2010, the Legal Officer, again on behalf of the Trial Chamber, informed the Defence that this second document remained unsatisfactory and stated that if the Defence did not provide an adequate medical report by 29 April 2010 the Trial Chamber would dismiss the Defence Motion.

DELIBERATIONS

Applicable Law

Rule 71: Depositions

- (A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer [...]
- (D) The deposition may also be given by means of a video-conference.

¹ *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Motion for Video Link Testimony of Witness T7, 14 April 2010 ("Motion").

² *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D, Prosecutor's Response to Nzabonimana's Motion Video Link Testimony of Witness T7, 15 April 2010 ("Response").

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Testimony via video – conference in this instance

5. The Trial Chamber recalls that as a rule, the testimony of witnesses shall be heard directly by the Chamber, pursuant to Rule 90 (A), but that a Trial Chamber may instead authorise testimony by video-conference where it is in the interests of justice to do so under Rules 54 and 71(D).

6. In doing so, the Trial Chamber may take into account whether it is in the interests of justice to accord the Defence Motion by reviewing the following factors: i) the importance of the testimony; ii) the inability or unwillingness of the witness to travel to Arusha to testify; and iii) whether a good justification has been adduced for that inability and/or unwillingness of the witness to travel.

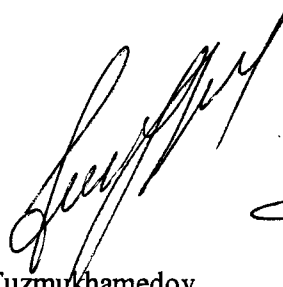
7. However, the Defence has failed to provide adequate justification for the inability of the witness to travel. Over two months have elapsed since the witness' doctor issued a letter referring to the witness' illness as temporary. The 29 April 2010 deadline for a new letter has now expired.

**FOR THESE REASONS, THE TRIAL CHAMBER
DENIES** the Motion.



Arusha, 19 May 2010, done in English.

Solomy Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

