



ICTR-00-55C-T
07-02-2011
(5318-5315)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

5318
AM

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuiga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 7 February 2011

THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

JUDICIAL RECEIVED
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**DECISION ON PROSECUTOR'S URGENT SECOND
MOTION FOR DISCLOSURE OF THE PARTICULARS OF
A DEFENCE OF ALIBI PURSUANT TO RULES 54 AND 67(A)(ii)**

Office of the Prosecution:
Drew White
Kirsten Gray
Yasmine Chubin
Zahida Virani

Defence Counsel for Ildephonse Nizeyimana:
John Philpot
Cainnech Lussiaa-Berdou
Myriam Bouazdi

[Signature]

INTRODUCTION

1. On 11 January 2011, the Chamber issued its "Decision on Prosecution Motion for Disclosure of the Particulars of a Defence Pursuant to Rule 67(A)(ii)" ("11 January Decision").
2. On 28 January 2011, the Office of the Prosecutor ("Prosecution") filed the "Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi Pursuant to Rules 54 and 67(A)(ii)" ("Motion"). The Prosecution submits that the Defence team of the Accused, Ildéphonse Nizeyimana, ("Defence" and "the Accused" respectively), has submitted insufficient details concerning its alibi.¹ The Prosecution requests that the Chamber order the Defence to make a number of additional disclosures with respect to the Accused's alibi defence. More specifically, these include: providing greater specificity as to the places the Accused may have been during periods of absence from Butare; the date of his return to Butare from Mata; details as to how each witness appearing in the Alibi Notice will support the alibi; other evidence which the Defence plans to rely on to support the alibi; and particulars for each witness, including their activities in 1994, parentage, birthplace, and current or 1994 residence, as well as full geographical information for alibi witnesses residing in Rwanda.² The Prosecution also asserts that the Defence should provide rolling disclosure of all available information even if full disclosure is not yet possible,³ and suggests that the Defence has already failed to meet its disclosure obligations with respect to alibi in a timely manner, impeding the Prosecution's ability to respond to the alibi.⁴
3. On 31 January 2011, the Defence filed a response to the Motion,⁵ arguing that the Prosecution should have challenged any insufficiency in the information accompanying the Alibi Notice sooner, and thus that prejudice suffered by the Prosecution because of delay in provision of additional alibi information should not be held against the Accused.⁶ The Response also notes that the Alibi Notice was filed as soon as the Chamber issued a protective order for relevant defence witnesses.⁷ In addition, the Response provides additional information regarding the dates of the Accused's travel between Mata and Butare,

¹ See Motion, para. 14, citing Ildéphonse Nizeyimana's Notice of Alibi, filed 12 January 2011 ("Alibi Notice").

² See Motion, para. 28; Alibi Notice, pp. 3, 4.

³ Motion, paras. 26, 28.

⁴ Motion, paras. 24, 27.

⁵ Response to Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi Pursuant to Rules 54 and 67(A)(ii), filed 31 January 2011 ("Response").

⁶ See Response, paras. 3, 4.

⁷ Response, para. 6.



briefly summarises the alibi witnesses' expected testimony, and provides their current city and country of residence.⁸

4. On 1 February 2011, the Prosecution filed a reply to the Response.⁹ The Reply submits that the Response fails to explain why information that related to unprotected witnesses was not disclosed as earlier. The Prosecution again asserts that the geographical information provided for Rwandan alibi witnesses is insufficient, and that more witness particulars should be disclosed.¹⁰ Finally, the Prosecution reiterates that it suffered prejudice because of the incomplete nature and unjustified late filing of the Alibi Notice,¹¹ and requests that the Chamber order "the Defence to urgently make the necessary disclosures in order to comply with Rule 67(A)(ii)" of the Rules of Procedure and Evidence ("Rules").¹²

DELIBERATIONS

5. The Chamber recalls that Rule 67(A) of the Rules requires the Defence "[a]s early as reasonably practicable and in any event prior to the commencement of the trial", to notify the Prosecution of any "defence of alibi" or "special defence". The Chamber further recalls that "[i]f either party discovers additional evidence or information or materials which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or information or materials."¹³

6. The Chamber notes that the Alibi Notice was filed on 12 January 2011, before the start of the trial. The Chamber also observes that in the Alibi Notice and Response, the Defence has made a number of disclosures. These include specific dates on which the Accused was allegedly in Mata, and a number of details concerning alibi witnesses, including relevant witnesses' location in 1994, alibi witnesses' current city and country of residence, and a short summary of alibi witnesses' expected testimony.¹⁴

7. The Prosecution's submissions do not demonstrate that the Defence is in possession of additional information with respect to alibi witnesses that it is required to disclose. In these circumstances, there is no justification for ordering disclosure of additional information

⁸ Response, paras. 9, 11.

⁹ Prosecutor's Reply to Defence Response to Prosecutor's Urgent Second Motion for Disclosure of the Particulars of a Defence of Alibi pursuant to Rules 54 and 67(A)(ii), filed 1 February 2011 ("Reply").

¹⁰ Reply, para. 7.

¹¹ See Reply, paras. 9-13.

¹² Reply, para. 15.

¹³ Rule 67(D) of the Rules.

¹⁴ See Response, para. 11.



concerning the alibi. The Chamber notes, however, that when and if the Defence obtains additional relevant information, including full geographical particulars for alibi witnesses,¹⁵ it is required to disclose this information. In this respect, the Chamber recalls that as explained in its 11 January Decision:

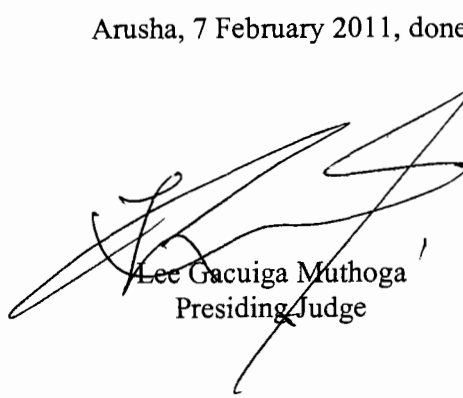
[T]he requirements of Rule 67 of the Rules are not discretionary, including those provisions relating to timing of notifications. The Chamber further notes that even in cases where full notification under Rule 67 of the Rules is not possible, the Rule does not preclude early partial notification addressing already decided elements of a special defence or alibi. The Chamber will closely monitor parties' submissions [...]¹⁶

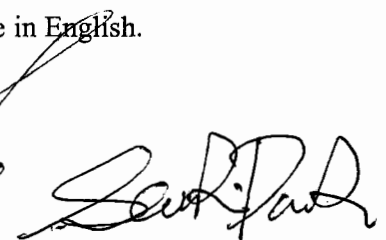
8. Finally, the Chamber notes that it is not convinced that the Prosecution has been materially prejudiced by the timing of the Defence's alibi submissions. The Defence's disclosures are reasonably detailed. In addition, the Chamber observes that if the Prosecution concludes that the interests of justice require it to elicit further information from witnesses who previously testified, it can apply to recall them, in addition to exercising its right to call rebuttal witnesses.¹⁷

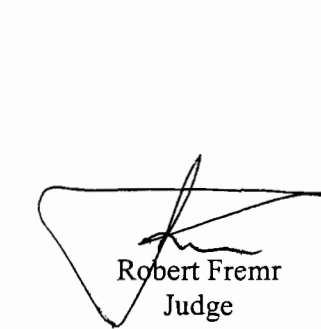
FOR THESE REASONS, THE CHAMBER


DENIES the Motion.

Arusha, 7 February 2011, done in English.


Lee Gacuga Muthoga
Presiding Judge


Seon Ki Park
Judge


Robert Fremr
Judge

[Seal of the Tribunal]


¹⁵ Cf. *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-T, Decision on Prosecution Motion for Alibi Particulars, 19 October 2009, para. 8.

¹⁶ 11 January Decision, para. 5, internal citations omitted.

¹⁷ See Rules 67(A)(ii), 85(A), and 90(F) of the Rules; *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006, para. 253; *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 216.