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ICTR-00-55C-T
14-02-2011
(5376-5374)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

5376
AM

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 14 February 2011

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JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

Ildephonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION FOR
TESTIMONY VIA VIDEO-LINK**

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

Defence Counsel for Ildephonse Nizeyimana:
John Philpot
Cainech Lussiaà-Berdou
Myriam Bouazdi

INTRODUCTION

1. On 9 February 2011, the Office of the Prosecutor ("Prosecution") requested that the Chamber permit Witness QCQ and Witness YAP to provide evidence via video-link from Kigali.¹ The Prosecution submits that it is necessary for Witness QCQ to testify via video-link because of the late stages of her pregnancy, and notes that it was only made aware of this information on 4 February 2011.² The Prosecution further submits that it is necessary for Witness YAP to give evidence via video-link because of the witness's belief that he will lose his job and/or face harassment at work should he travel to Arusha to testify at the Tribunal.³ The Prosecution notes that it only became aware of Witness YAP's concerns on 27 January 2011.⁴

2. On 10 February 2011, the Defence team of the Accused, Ildélphonse Nizeyimana ("the Defence" and "the Accused" respectively), filed a response to the Motion.⁵ While the Defence does not oppose the request by the Prosecution to receive the testimony of Witness QCQ by video-link, it opposes Witness YAP providing evidence via video-link.⁶ The Defence submits that the Prosecution did not meet its burden of proof in demonstrating that Witness YAP is in fact a "key witness".⁷

3. The Defence also argues that the Prosecution failed to show the necessity for Witness YAP to testify by video-link.⁸ According to the Defence, the witness could have known more than a week in advance whether his employment would be at risk, and, additionally, should be able to leave his work for a number of days without revealing the fact that he intends to testify before the Tribunal in Arusha.⁹

4. On 11 February 2010, the Prosecution filed a Reply to the Defense's Response Motion.¹⁰ The Prosecution reiterates in its Reply Motion the necessity of having Witness YAP testify via video-link from Kigali and offers further details, *inter alia*, concerning the

¹ Prosecutor's Extremely Urgent Motion for Testimony via Video-Link, filed 9 February 2011 ("Motion").

² Motion paras. 5-6.

³ Motion para. 14.

⁴ Motion para. 16.

⁵ Response to Prosecutor's Extremely Urgent Motion for Testimony via Video-Link, filed on 10 February 2011 ("Response").

⁶ Response, para. 8.

⁷ Response, para. 10.

⁸ Response, paras. 11-13.

⁹ Response, paras. 11-13.

¹⁰ Prosecutor's Reply to Defense's Response to Prosecutor's Extremely Urgent Motion for Testimony via Video-Link, filed on 10 February 2011 ("Prosecutor's Reply").



witness's difficulties in travelling to Arusha.¹¹ The Prosecution further explains in greater detail the importance of Witness YAP's testimony to the Prosecution's case.¹²

DELIBERATIONS

5. The Chamber recalls that Rule 90(A) of the Rules of Procedures and Evidence ("Rules") requires that "[w]itnesses shall, in principle, be heard directly by Chambers." A Chamber may, however, authorise testimony in lieu of physical appearance, when it is "necessary to safeguard the witness's security"¹³ or in the interest of justice.¹⁴

6. In determining whether video-link testimony is in the interest of justice, the Trial Chamber shall consider the importance of the testimony, the witness's inability or unwillingness to attend, and whether a good reason has been adduced for that inability or unwillingness.¹⁵ As the Defence notes, the reason for refusal to attend need not be objectively justified.¹⁶ The party making the request must show that the witness has a credible basis for refusal, and that those grounds are genuinely held, giving a Chamber reason to believe that he or she will not testify unless a Chamber allows the witness to do so via video-link.¹⁷ The burden of proof rests with the Party making the request.

7. The Chamber notes that there is no dispute with respect to the Prosecution's request to hear Witness QCQ via video-link.¹⁸ The Chamber finds that this witness meets the criteria necessary to allow testimony via video-link.

8. However, the Chamber does not find that Witness YAP's fear of losing his employment is a credible basis for his refusal to testify before this Tribunal in person. The Chamber further notes that Witness YAP had ample time to apprise the Prosecution of his reason for refusing to testify in person.

¹¹ Prosecutor's Reply, paras. 6-11.

¹² Prosecutor's Reply, paras. 4-5.

¹³ *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on the Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004 ("BT Decision"), para. 8.

¹⁴ *Prosecutor v. Augustin Bizimungu et al.*, Case No. ICTR-00-56-T, Decision on the Prosecution Request for Witness Roméo Dallaire to Give Testimony by Video-Link (TC), 15 September 2006, para. 13; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Nsengiyumva Motion for Witness Higaniro to Testify by Video-Conference (TC), 29 August 2006, para. 3; BT Decision, paras. 5-7.

¹⁵ *Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Testimony by Video-Link (TC), 29 June 2006, para. 2; BT Decision, para. 6.

¹⁶ Response, para. 5. See also the *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion for Video-Link: Alphonse Ntilivamunda, 12 January 2010, para. 2.

¹⁷ See, e.g., Ntilivamunda Decision, para. 2.; *Prosecutor v. Bagosora et al.*, Case No. ICTR-96-7, Decision on Video-Conference Testimony of Kabiligi Witnesses KX-38 and KBV-46, 5 October 2006, para. 3, citing BT Decision, paras. 6, 13.

¹⁸ Response, para. 8.

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9. In these circumstances, the Chamber finds that the Prosecution has not met its burden of showing that hearing the testimony of Witness YAP via video-link is in the interest of justice. The Prosecution can either forego the testimony of Witness YAP or have the witness testify during the week of 21 March 2011.

FOR THESE REASONS, THE CHAMBER


GRANTS the Prosecution Motion in part;

ORDERS that the testimony of Witnesses QCQ be taken by video-link from Kigali, and that the Prosecution notify the Chamber of the date for their testimonies by 15 February 2011;


INSTRUCTS the Registrar, in consultation with the parties, to make all necessary arrangements with respect to the video-link transmission of the testimony of Witness QCQ, and to maintain a video record of the testimony for possible future use by the Chamber; and

DENIES the Prosecution's request that the testimony of Witness YAP be taken by video-link.

Arusha, 14 February, done in English.


Lee Gacuiga Muthoga
Presiding Judge




Robert Fremr
Judge