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ICTR-98-44D-T  
15-02-2011  
(5705-5698)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 14 February 2011

**THE PROSECUTOR**

v.

**Callixte NZABONIMANA**

*Case No. ICTR-98-44D-T*

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**DECISION ON PROSECUTOR'S MOTION FOR THE RECALL OF DEFENCE  
WITNESS JEAN-MARIE VIANNEY MPORANZI  
(Rules 54 of the Rules of Procedure and Evidence)**

***Office of the Prosecutor:***

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## INTRODUCTION

1. The Defence called witness Jean-Marie Vianney Mporanzi ("Mr. Mporanzi"), formerly identified by his pseudonym CNAO, to testify in the instant proceedings on 25, 26, 27 and 31 May 2010, during a trial session that began on 14 April and concluded on 3 June 2010.
2. During examination-in-chief, Mr. Mporanzi testified that subsequent to his interview with a Prosecution investigator from the ICTR in August 1998,<sup>1</sup> his travel allowance was disbursed through the Rwandan administrative authorities in Kigali, by a *Sous-Préfet* named "Marguerite".<sup>2</sup>
3. The Prosecution objected to this line of questioning for lack of notice and requested three weeks to conduct an investigation into the allegation.<sup>3</sup> After hearing submissions from both parties, the Chamber ruled that the allegation was not covered by the Pre-Defence Brief or by Mr. Mporanzi's witness statement, and that the accusations not only went to the heart of the Defence case, but also to the integrity of the Office of the Prosecutor. The Trial Chamber therefore granted the Prosecution one week to investigate the matter, with a view to completing Mr. Mporanzi's cross-examination before the end of the trial session.<sup>4</sup>
4. Prior to the end of the session, the Prosecution announced that it would be unable to complete its investigations and thus did not recall Mr. Mporanzi for further cross-examination at that time. The Prosecution advised the Trial Chamber that the one week it had been allocated had not been sufficient to obtain the results desired for an effective cross-examination of Mr. Mporanzi on the fresh allegations.<sup>5</sup> The Trial Chamber noted that the Prosecution's investigations were ongoing but declared Mr. Mporanzi's testimony to be complete and stipulated that any further appearance by Mr. Mporanzi before the Chamber would require an application for recall.<sup>6</sup>
5. On 10 August 2010, the Prosecution filed a Motion seeking the admission of affidavits signed by Marguerite Mukansanga, the former *Sous-Préfet* at issue, and Alfred Kwende,

<sup>1</sup> Transcript of 26 May 2010 [Open Session], p. 22.

<sup>2</sup> Transcript of 26 May 2010 [Open Session], p. 33; Transcript of 27 May 2010 [Open Session], pp. 6-13.

<sup>3</sup> Transcript of 26 May 2010 [Open Session], p. 33, pp. 43-46.

<sup>4</sup> Transcript of 27 May 2010 [Open Session], pp. 1-2.

<sup>5</sup> T. 2 June 2010 (Closed Session) pp. 10-11.

<sup>6</sup> T. 2 June 2010 (Closed Session), p. 12, T. 3 June 2010, p. 67.

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the Commander and Chief of ICTR's Investigations section, pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules").<sup>7</sup>

6. On 16 September 2010, the Trial Chamber denied the Prosecution motion of 10 August 2010 on the grounds that admission was sought under Rule 89 (C) of the Rules of Procedure and Evidence ("Rules") rather than Rule 92 *bis*.<sup>8</sup>
7. On 21 January 2011, the Prosecution filed a Motion requesting that the Trial Chamber recall Defence Witness Jean-Marie Vianney Mporanzi for further cross-examination.<sup>9</sup>
8. On 26 January 2011, the Defence filed its Response, objecting to the recall of Witness Mporanzi.<sup>10</sup>
9. On 27 January 2011, the Prosecution filed its Reply.<sup>11</sup>

### SUBMISSIONS OF THE PARTIES

#### *Motion*

10. The Prosecution submits that Mr. Mporanzi's evidence imputes a collaboration between the ICTR and Rwandan Authorities in coercing witnesses to give false testimony against accused persons in this Tribunal, and in particular the Accused Callixte Nzabonimana.<sup>12</sup> Mr. Mporanzi testified that an example of this 'collaboration' was the payment of travel allowances to Prosecution witnesses which were disbursed through the Rwandan authorities in Kigali.<sup>13</sup> He further alleged that he was a victim of this 'coercion', and that he fabricated accusations against the Accused Nzabonimana in his initial statements to the Prosecution as a result.<sup>14</sup>
11. The Prosecution asserts that allegations of Rwandan government interference in cases, such as those levied by Mr. Mporanzi, constitute a core component of the Defence strategy in this case, as indicated in the Pre-Defence Brief and through the testimony of

<sup>7</sup> *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Prosecutor's Motion for the Admission of Maguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 10 August 2010 ("10 August 2010 Motion").

<sup>8</sup> *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Decision on Prosecutor's Motion for the Admission of Maguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 16 September 2010 ("16 September 2010 Decision"), paras. 19-20.

<sup>9</sup> *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Prosecutor's Motion for the Recall of Defence Witness Jean Vianney Mporanzi, 21 January 2011.

<sup>10</sup> *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Response to Prosecutor's Motion for the Recall of Defence Witness Jean Vianney Mporanzi, 26 January 2011.

<sup>11</sup> *Prosecutor v. Callixte Nzabonimana*, ICTR-98-44D-T, Prosecutor's Reply to Nzabonimana's Response to Prosecutor's Motion for the Recall of Defence Witness Jean Vianney Mporanzi, 27 January 2011.

<sup>12</sup> Motion, para. 15.

<sup>13</sup> T. 26 May 2010, p. 33; Transcript of 27 May 2010 [Open Session], pp. 6-13.

<sup>14</sup> Motion, para. 16.

other Defence witnesses.<sup>15</sup> The Prosecution rejects these attempts to discredit the integrity of the Office of the Prosecutor as baseless.<sup>16</sup>

12. According to the Prosecution, it has now concluded its investigation into the matter of the alleged disbursements by Rwandan authorities. It attaches to its Motion affidavits from two investigators who took statements from Mr. Mporanzi in August 1998.<sup>17</sup> Both investigators attest that neither they, nor any other person, ever directed Mr. Mporanzi or any other witnesses to Rwandan authorities for the collection of stipends or payments. Rather, avers the Prosecution, payments to witnesses, including Mr. Mporanzi, were paid directly from the ICTR from an imprest account established to cover transport and other related expenses. The Prosecution also appends to its motion the affidavit of *Sous-Préfet* Marguerite Mukansanga, denying that she ever met with Mr. Mporanzi or paid him any money on behalf of the ICTR.<sup>18</sup> It has further attached affidavits from two investigators who interviewed Mr. Mporanzi in August 1998 also denying the procedure as laid out by Mr. Mporanzi.<sup>19</sup>
13. The Prosecution argues that recalling Mr. Mporanzi will grant the Prosecution the opportunity to confront him with the new information it has gathered and enable the Chamber to further assess his credibility accordingly.<sup>20</sup>

#### *Response*

14. In its Response, the Defence objects to recalling Mr. Mporanzi and notes that the Trial Chamber must assess the purpose of recalling the witness as well as the reasons the witness was not examined earlier.<sup>21</sup> It argues that the Prosecution already cross-examined Mr. Mporanzi extensively, and that he is unlikely to offer new evidence on further examination,<sup>22</sup> and thus further cross-examination would serve no useful purpose.<sup>23</sup>
15. According to the Defence, the Prosecution has had eight months to file the instant Motion.<sup>24</sup> It further argues that the Prosecution has not demonstrated good cause for not cross-examining the witness on this issue earlier, noting that on 27 May 2010, the

<sup>15</sup> Motion, paras. 18-23.

<sup>16</sup> Motion, paras. 24-26.

<sup>17</sup> Motion, Annexes A and B respectively.

<sup>18</sup> Motion, paras. 30-33.

<sup>19</sup> Motion, Annexes A and B.

<sup>20</sup> Motion, paras. 34-35.

<sup>21</sup> Response, para. 13.

<sup>22</sup> Response paras. 21-22, 24.

<sup>23</sup> Response, paras. 19-21.

<sup>24</sup> Response, para. 33.

Prosecution stated in court that it would “demonstrate by the end of this cross-examination...that investigators are not authorised to give such stipends to third parties to give to other people, and particularly witnesses.” The Defence further observes that the Prosecution had Mr. Kwende’s statement in its possession on 2 June 2010, before the close of Mr. Mporanzi’s testimony.<sup>25</sup>

16. The Defence also refers to a prior decision of the Trial Chamber rejecting a Defence Motion to recall Prosecution Witness CNAL on the basis that the Defence had cross-examined the witness extensively, and argues that similar reasoning is applicable in this case.<sup>26</sup>

17. Finally, the Defence suggests that a Rule 92 *bis* motion would be the more appropriate avenue for the Prosecution to elicit this evidence in the present circumstances.<sup>27</sup>

#### *Reply*

18. The Prosecution replies that it is only required to show ‘good cause’ to believe that Mr. Mporanzi lied about the reimbursement of his travel expenses and therefore cannot be considered a credible or reliable witness, and that it has done so.<sup>28</sup>

19. The Prosecution adds that the gravity of the allegations made by Mr. Mporanzi are sufficient grounds to recall the witness, that the Defence cannot prejudge what the witness will say, and that the Defence has not demonstrated that it may be prejudiced by the recall of the witness.<sup>29</sup>

20. The Prosecution suggests that rather than contest the instant Motion the Defence should have moved the Trial Chamber to reconsider its decisions of 27 May 2010 (oral), and of 16 September 2010, which both indicated that the Prosecution could recall the witness, and suggests that the Defence has had eight months to challenge these decisions.<sup>30</sup>

21. With respect to the Defence proposition that the Prosecution address this issue through Rule 92 *bis*, the Prosecution argues that it considers the recall of Mr. Mporanzi to be a more prudent use of the Court’s time than to call the two investigators whose statements are contained in Annexes A and B of the Motion as witnesses.<sup>31</sup>

<sup>25</sup> Response, paras. 27-28.

<sup>26</sup> Response, para. 24.

<sup>27</sup> Response para. 23.

<sup>28</sup> Reply, para. 12

<sup>29</sup> Reply, paras. 13-15.

<sup>30</sup> Reply, paras. 17, 19.

<sup>31</sup> Reply, paras. 21-27.

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22. Finally, the Prosecution contends that the reference of the Defence to the Trial Chamber's decision with respect to the recall of Witness CNAL is inapposite to the current circumstances.<sup>32</sup>

## DELIBERATIONS

### *Applicable Law*

23. Rule 54 states that:

At the request of either party or *proprio motu*, a judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrant and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

24. According to the relevant jurisprudence before this Tribunal, a party seeking to recall a witness must demonstrate "good cause".<sup>33</sup> In assessing good cause, the Chamber must carefully consider: 1) the purpose of the proposed testimony; and 2) the party's justification for not offering such evidence when the witness originally testified. The right to be tried without undue delay as well as concerns of judicial economy demand that recall should be granted only in the most compelling of circumstances where the evidence is of significant probative value and not of a cumulative nature.<sup>34</sup>

25. Further jurisprudence has elaborated that recall may be warranted in order to demonstrate inconsistencies between testimony of witnesses and any declarations obtained subsequently, if the moving party can show that prejudice would result from the inability to put such inconsistencies to the witness.<sup>35</sup>

<sup>32</sup> Reply, paras. 30-32.

<sup>33</sup> *Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumve* ("Bagosora et al."), Case No. ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination (TC), 19 September 2005, para. 2; *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination (TC), 28 October 2004, para. 5; *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al."), No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Ahmed Mbonkunkiza (25 September 2007) at para. 5.

<sup>34</sup> *Bagosora et al.* Case No. ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6; See also *Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Decision on the Defence Motion for the Re-examination of Defence Witness DE, August 1998, para. 14. *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH, 12 March 2008, para. 5.

<sup>35</sup> *Bagosora et al.* Case No. ICTR-98-41-T, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses, 16 December 2003, para. 8.

*Analysis*

Purpose of Proposed Testimony

26. With respect to the purpose of the proposed testimony, the Prosecution submits that it wishes to recall Mr. Mporanzi in order to “challenge his unsubstantiated allegations with tangible evidence”<sup>36</sup> regarding allegations that the Chamber has already deemed integral elements not only to the Defence case, but which touch upon the integrity of the Office of the Prosecutor and the Tribunal as a whole. Because the Prosecution was deprived of proper notice of these allegations when Mr. Mporanzi originally testified, the Chamber considers that these serious allegations merit further ventilation through cross-examination.<sup>37</sup> The Trial Chamber also finds the Defence argument that Mr. Mporanzi would “simply repeat what he has already stated in his testimony”<sup>38</sup> to be speculative, as a witness’ answers may change when presented with concrete counterevidence rather than hypothetical scenarios. The Trial Chamber is therefore of the view that the Prosecution has demonstrated that the purpose of the proposed testimony is important and relevant.

Justification for not offering evidence when Mr. Mporanzi originally testified

27. Regarding the Prosecution’s justification for not offering such evidence when Mr. Mporanzi originally testified, the Trial Chamber recalls that the Prosecution was only able to obtain the first batch of evidence contradicting Mr. Mporanzi’s evidence – the affidavits of Ms. Mukansanga and Mr. Kwende – on 2 June 2010, the day before the trial session in which Mr. Mporanzi testified ended. The prosecution had categorically stated at the close of the previous session that they were unable to complete their investigation within that session and that they would not be able to cross-examine Mr. Mporanzi in that regard. Moreover, the production of further affidavits at later dates tends to show that the Prosecution investigation was not complete at that time. The Trial Chamber considers that it would not have served the interests of judicial economy to require the Prosecution to present its evidence to Mr. Mporanzi in a piecemeal fashion, and is persuaded that the Prosecution was entitled to apply for recall when it was in a position to comprehensively present its rebuttal.

<sup>36</sup> Motion, para. 26.

<sup>37</sup> T. 2 June 2010 (Closed Session) p. 10-11.

<sup>38</sup> Response paras. 19-21.


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28. For these reasons, the Trial Chamber concludes that the Prosecution has demonstrated good cause to recall Mr. Mporanzi for further cross-examination.
29. Regarding the Defence submission that Rule 92 *bis* would be a more appropriate avenue through which to adduce the evidence contradicting Mr. Mporanzi's claims, the Trial Chamber having already determined that the test for recall has been satisfied in the present circumstances, it does not consider it appropriate to comment on the mode of presentation of the Prosecution case.

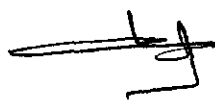
**FOR THESE REASONS, THE TRIAL CHAMBER**

- I. GRANTS** the Prosecution Motion.
- II. ORDERS** the recall of Defence Witness Jean-Marie Vianney Mporanzi immediately after the completion of the Defence case for further cross-examination on the specific issue of alleged disbursement of funds to Prosecution witnesses appearing before the Tribunal by Rwandan officials.
- III. DIRECTS** the Registry to take all the necessary steps for the recall of Jean-Marie Vianney Mporanzi.

Dated in Arusha, this 14 day of February 2011, done in English.

  
Solomy Balungi Bossa  
Presiding Judge

  
Bakhtiyar Tuzukhomedov  
Judge

  
Mparany Rajohnson  
Judge

[Seal of the Tribunal]

