



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-00-55C-T
18-04-2011
(5869-5866)

5869
AM

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 18 April 2011

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

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**DECISION ON DEFENCE MOTION FOR A HEARING BY VIDEO-LINK FOR
WITNESS BEJ01**

Office of the Prosecution:
Drew White
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Yasmine Chubin
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Defence Counsel for Ildéphonse Nizeyimana:
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INTRODUCTION

1. On 30 March 2011, the Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) filed a motion requesting that the Trial Chamber permit Witness BEJ01 to give evidence via a video-link from The Hague.¹ The Defence submits that Witness BEJ01 is unable to attend proceedings in Arusha, as he is currently serving a term of imprisonment in Belgium.² Although the witness is not presently in detention, he remains under supervision of the state and his movement has been restricted to the Schengen countries as a consequence.³ The Defence included Witness BEJ01’s declaration in support of its submission.⁴

2. The Defence further requests the Chamber to allow for Witness BEJ01’s testimony to take place in the Netherlands as he has faced threats from the Rwandan Patriotic Front (“RPF”) while residing in Belgium, and fears losing his present employment if he were to give testimony in Belgium.⁵ Witness BEJ01 contends that he already lost an earlier position in Belgium after the RPF contacted his employer.⁶ The Defence thus moves for the Chamber to request the cooperation of the Dutch authorities and the authorities of the International Criminal Tribunal for Yugoslavia (“ICTY”) to facilitate Witness BEJ01’s testimony from The Hague.⁷

3. On 4 April 2011, the Office of the Prosecutor (“Prosecution”) filed a response to the Motion.⁸ The Prosecution argues that Witness BEJ01’s status as a detainee and an alleged co-perpetrator make his testimony inherently unreliable, thus rendering his testimony less important to the Defence case.⁹ The Prosecution also challenges the Defence’s assertion that the witness is unable to attend the proceedings in person, on the grounds that permission for his attendance may be obtained through a request for the Transfer of a Detained Witness under Rule 90 *bis* of the Rules of Procedure and Evidence (“the Rules”).¹⁰ The Prosecution asserts that the witness’s unwillingness to travel to the tribunal out of fear of repercussions

¹ Defence Motion for a Hearing by Video-Link for Witness BEJ01, 30 March 2011 (“Motion”).

² Motion, para. 12; Declaration Witness BEJ01.

³ Motion, para. 12; Declaration Witness BEJ01.

⁴ Declaration Witness BEJ01, pp. 6-7.

⁵ Motion, paras. 13, 14.

⁶ Motion, paras. 13, 14; Declaration Witness BEJ01.

⁷ Motion, p. 5.

⁸ Prosecutor’s Response to Defence Motion for a Hearing by Video-Link for Witness BEJ01, 4 April 2011 (“Response”).

⁹ Response, paras. 12-18.

¹⁰ Response, paras. 19-25.

from the RPF is an insufficient justification.¹¹ Finally, the Prosecution submits that the witness should testify in person because he is likely to be the subject of extensive cross-examination.¹²

4. The Defence did not file a reply.

DELIBERATIONS

5. Rule 90 of the Rules of Procedure and Evidence (“Rules”) provides that “[w]itnesses shall, in principle, be heard directly by the Chambers.” A Chamber may, however, order testimony via video-link where is “necessary to safeguard the witness’s security”¹³ or if it is in the interests of justice.¹⁴

6. In determining whether video-link testimony is in the interests 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 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 on the party making the request.

7. The Chamber notes that Witness BEJ01 is expected to testify to the events described in paragraph 28 of the Second Amended Indictment (“Indictment”).¹⁸ The Defence submits that witness BEJ01 is a key witness to the Defence case, because he is specifically mentioned in paragraph 28 of the Indictment and will deny the facts alleged therein.¹⁹ Witness BEJ01 is further expected to provide testimony as to the whereabouts of the Accused towards the end

¹¹ Response, paras. 26-33.

¹² Response, paras. 34-38.

¹³ *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecution Request for Testimony of Witness BT via Video-Link, 8 October 2004 (“BT Decision”), para. 8.

¹⁴ *Prosecutor v. Augustin Bizimungu et al.*, ICTR-00-56-T, Decision on the Prosecution Request for Witness Romeo Dallaire to Give Testimony by Video-Link, 15 September 2006, para. 13; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Nsengiyumva Motion for Witness Higaniro to Testify by Video-Conference, 29 August 2006, para. 3; BT Decision, paras. 5-7.

¹⁵ *Prosecutor v. Karera*, ICTR-01-74-T, Decision on Testimony by Video-Link, 29 June 2006, para. 2; BT Decision, para. 6.

¹⁶ See also BT Decision, para. 13.

¹⁷ See, e.g., *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion for Video-Link: Alphonse Ntilivamunda, 12 January 2010, para. 2.; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Video-Conference Testimony of Kabiligi Witnesses KX-38 and KVB-46, 5 October 2006, para. 3, citing BT Decision, paras. 6, 13.

¹⁸ Second Amended Indictment, filed 17 December 2010; Motion, para. 16.

¹⁹ Motion, paras. 17, 21.

of April 1994.²⁰ Having considered the summary of Witness BEJ01's anticipated testimony, the Chamber is satisfied that the witness's testimony could be important for the Defence's case. The Chamber notes that the witness's status as a detainee and alleged co-perpetrator will form part of the overall analysis of the credibility of his testimony.²¹ His status does not, however, render his anticipated testimony immediately unreliable.

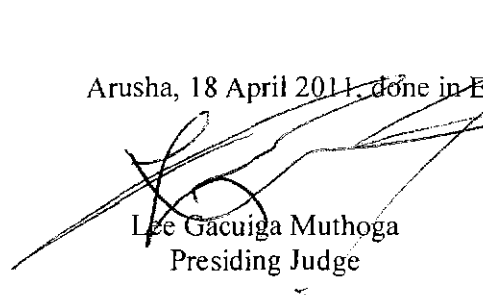
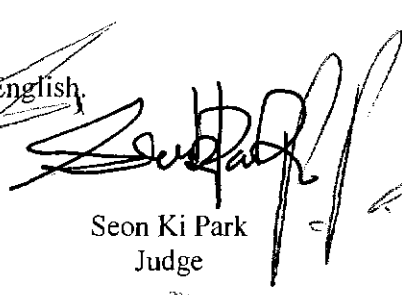
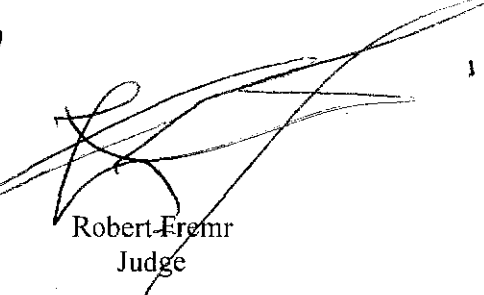
8. The Chamber notes that the Defence has not annexed a letter from the Belgian authorities indicating their unwillingness to transfer Witness BEJ01 to Arusha to accommodate his testimony before the tribunal.²² Moreover, while the terms of Witness BEJ01's sentence may prevent him from leaving the Schengen countries, this does not preclude the Defence from moving the Chamber to request the Government of Belgium to transfer Witness BEJ01 to Arusha pursuant to Rule 90, to enable him to provide live testimony.

9. The Chamber reiterates the preference for witnesses to testify in person, particularly where the witness may be the subject of a lengthy cross-examination. Based on these circumstances, the Chamber finds that the Defence has not demonstrated a good reason for the witness's inability to provide live testimony in Arusha. The Chamber therefore finds that the Defence has failed to meet its burden of showing that the video-link transmission of Witness BEJ01's testimony is in the interests of justice.

FOR THESE REASONS, THE CHAMBER

DENIES the Motion.

Arusha, 18 April 2011, done in English.

		
Lee Gacuiiga Muthoga Presiding Judge	Seon Ki Park Judge	Robert Fremr Judge



²⁰ Motion, para. 19.

²¹ *Prosecutor v. Ntagerura, Bagambiki and Imanishimwe*, ICTR-99-46-A, Judgement (AC), 7 July 2006, para. 204; *Niyitegeka v. Prosecutor*, ICTR-96-14-A, Judgement (AC), 9 July 2004, para. 98.

²² *Prosecutor v. Bagosora*, ICTR-98-41-T, Decision on Nsengiyumva Motion for Witness Higaniro to Testify by Video-Conference, 29 August 2006, para. 3.