

ICTR-00-55C-T
18-04-2011

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AM



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(5874 - 5870)

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

2011 APR 18 10:04 AM
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**DECISION ON PROSECUTOR'S URGENT MOTION TO RESTRICT THE
DEFENCE WITNESS LIST PURSUANT TO RULES 54, 73 & 73TER**

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

Defence Counsel for Ildéphonse Nizeyimana:
John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi

INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on Friday, 25 February 2011, after having called 38 witnesses. The Defence case is scheduled to commence on 9 May 2011.

2. On 15 March 2011, the Chamber ordered the Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) to provide the Prosecution with “the relevant list of witnesses”.¹ On 16 March 2011, the Defence filed a “preliminary” witness list, sequence and a collection of information sheets for the Defence witnesses (“16 March List”).² On 28 March 2011, the Defence filed its Pre Defence Brief (“PDB”).³

3. On 31 March 2011, the Office of the Prosecutor (“Prosecution”) filed a motion requesting the Chamber to order the Defence to comply with Rule 73ter of the Rules of Procedure and Evidence (“Rules”).⁴ The Prosecution submitted that the PDB on 28 March 2011 did not provide proper notice to the Prosecution of the Defence case.⁵ The Prosecution argued, *inter alia*, that it would not allow the two members of its team to testify on behalf of the Defence⁶ and that it regarded the absence of the Accused on the Defence witness list as notice of the fact that he will not testify at trial.⁷ The Prosecution further pointed out that the time estimate provided by the Defence with respect to the testimonies of its witnesses is not “a realistic projection of the time that will be consumed”.⁸

4. On 2 April 2011, the Defence responded to the Rule 73ter Motion by submitting that its investigations are ongoing, and the Defence is therefore unable to provide a finalized witness list and witness summaries at this time, unless the trial is delayed.⁹ The Defence reiterated, *inter alia*, the need for having the two members of the Prosecution testify,¹⁰ and

¹ Order Regarding Urgent Nizeyimana Defence Motion for Clarification, 15 March 2011.

² “Preliminary List of Witnesses and Sequence of Appearance”, 16 March 2011.

³ Nizeyimana Pre Defence Brief, 28 March 2011.

⁴ Prosecutor’s Urgent Motion Concerning Deficiencies of the Pre-Defence Brief Pursuant to Rules 54, 73, 73bis and 73ter (“Rule 73ter Motion”), 31 March 2011.

⁵ Rule 73ter Motion, para. 8.

⁶ Rule 73ter Motion, para. 10.

⁷ Rule 73ter Motion, para. 11.

⁸ Rule 73ter Motion, para. 37.

⁹ Response to Prosecutor’s Urgent Motion Concerning Deficiencies in the Pre-Defence Brief Pursuant to Rules 54, 73, 73bis, and 73ter (“Rule 73ter Response”), 2 April 2011, paras. 2, 6.

¹⁰ Rule 73ter Response, para. 4.



noted that the Accused had not waived its right to testify.¹¹ The Defence further submitted that its time projections for the witness testimonies are reasonable.¹²

5. On 6 April 2011, the Prosecution filed its “Urgent Motion to Restrict the Defence Witness List Pursuant to Rules 54, 73 & 73ter” (“Prosecution Motion”), which is the subject of this Decision. The Prosecution requests the Chamber to manage the following issues: “[1] a scheduling estimate for the Accused’s potential testimony, [(2)] the listing of OTP members as Defence witnesses [and (3)] the overall size, incompleteness and disarray of the witness listing, sequence and schedule.”¹³

6. On 8 April 2011, the Prosecutor filed its Reply to the Rule 73ter Response, in which it submits, *inter alia*, that the Defence has provided scant information with respect to the intended testimony of various witnesses and an expected time-line for the disclosure thereof.¹⁴

7. On 11 April 2011, the Defence filed its response to the current Prosecution Motion, submitting that if the Accused so chooses, his testimony shall last two days.¹⁵ The Defence further argues that the two members of the Prosecution on the Defence Witness List are necessary to “prove” a prior contradictory statement by Witness ZAV.¹⁶ Lastly, the Defence notes that it would revise its witness list by the 15th of April at the latest¹⁷ and that it is not complete.¹⁸

8. On 12 April 2011 the Chamber rendered its Decision with respect to the Prosecution’s Rule 73ter Motion.¹⁹

DELIBERATIONS

9. As a preliminary matter, the Chamber notes that the current Prosecution Motion, filed just six days after the Rule 73ter Motion, appears to raise very similar, if not identical issues submitted in its Rule 73ter Motion. The Chamber therefore refers the Prosecution to its

¹¹ Rule 73ter Response, para. 5.

¹² Rule 73ter Response, para. 12.

¹³ Prosecution Motion, para. 11.

¹⁴ Rule 73ter Motion, paras. 10-13; Prosecutor’s Reply to Defence Response to Prosecutor’s Urgent Motion Concerning Deficiencies of the Pre-Defence Brief Pursuant to Rules 54, 73, 73bis and 73ter, 8 April 2011, paras. 14-15.

¹⁵ Response to Prosecutor’s Urgent Motion to Restrict the Defence Witness List (“Defence Response”), 11 April 2011, para. 3.

¹⁶ Defence Response, paras. 4-14.

¹⁷ Defence Response, para. 15.

¹⁸ Defence Response, para. 18.

¹⁹ Decision on Prosecutor’s Urgent Motion Concerning Deficiencies of the Pre-Trial Defence Brief (“Rule 73ter Decision”), 12 April 2011.

Decision rendered on 12 April 2011 and reminds the Prosecution that it already examined and adjudicated these matters. The Chamber cautions the Prosecution to desist from filing motions raising matters that have already been determined, as it is a waste of valuable time.

10. With respect to the first issue raised by the Prosecution, namely the estimated time and sequence of the Accused's potential testimony, the Chamber notes that the Defence has indicated in its Response that the Accused, if he so chooses, will testify for two days.²⁰ The Chamber further refers the Prosecution to the Rule 73ter Decision, in which it requested the Accused to advise the Chamber, as soon as practically possible, whether he intends to testify or not.²¹ Accordingly, this matter is moot.

11. With respect to the second matter raised by the Prosecution, namely its refusal to have the two members of the Prosecution testify, the Chamber notes that it already disposed of this matter in the Rule 73ter Decision, by finding that the Defence cannot compel the members of the Prosecution to testify.²² The issue is therefore moot.

12. Lastly, the Prosecution submits that the Defence "unilaterally" increased its witness list in the Pre-Defence Brief²³ and cannot reasonably expect to complete the testimony of all the Defence witnesses within the allocated time.²⁴ The Prosecution further requests the Chamber to indicate to the Defence the "working parameters" for the allocation and use of trial time.²⁵ The Chamber again refers the Prosecution to the Rule 73ter Decision, in which the Chamber found that the Defence may alter its witness list without prior request before the commencement of the Defence case²⁶ and noted that the Defence has six weeks to complete the hearing of testimony of the Defence witnesses.²⁷ The issue is therefore moot.

13. The Chamber shall issue, prior to the commencement of the Defence case, a scheduling order detailing the allocation of time with respect to the Defence case.

FOR THESE REASONS, THE CHAMBER

DISMISSES the Prosecution as Moot.

²⁰ Defence Response, para. 3.

²¹ Rule 73ter Decision, p. 10.

²² Rule 73ter Decision, para. 21.

²³ Prosecution Motion, para. 39.

²⁴ Prosecution Motion, para. 42.

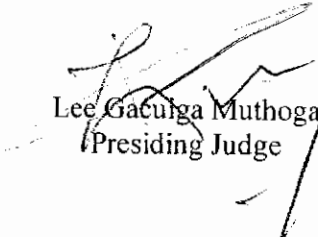
²⁵ Prosecution Motion, para. 46.

²⁶ Rule 73ter Decision, para. 15.

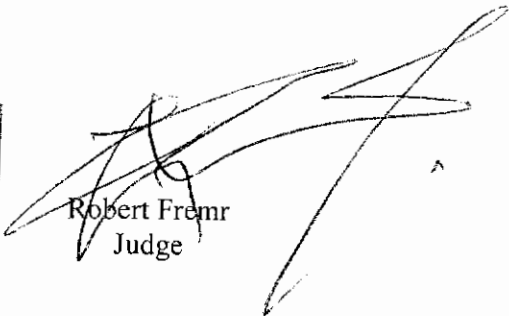
²⁷ Rule 73ter Decision, para. 18.



Arusha, 18 April 2011, done in English.


Lee Gacunga Muthoga
Presiding Judge


Seon Ki Park
Judge


Robert Fremr
Judge

[Seal of the Tribunal]

