

ICTR-98-44D-T
13-05-2011
(7655 - 7652)

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Am

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 13 May 2011

THE PROSECUTOR

v.

Callixte NZABONIMANA
Case No. ICTR-98-44D-T

JUDICIAL RECORDS/ARCHIVES
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ORDER TO DISCLOSE TO THE PARTIES THE AMICUS CURIAE REPORT ON ALLEGATIONS OF CONTEMPT OF THE TRIBUNAL BY PROSECUTION WITNESS CNAI PERTAINING TO DEFENCE WITNESS T36 AND FOR A REQUEST FOR SUBMISSIONS FROM THE PARTIES ON THE REPORT

Office of the Prosecutor
Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja

Defence Counsel
Vincent Courcelle-Labrousse
Philippe Larochelle



7654

INTRODUCTION

1. On 26 and 27 November 2009, Witness CNAI testified for the Prosecution in the instant case.
2. On 18 February 2010, the Trial Chamber ordered a series of Protective Measures for Defence witnesses.¹
3. On 13 May 2010, Defence Witness T36 informed a defence investigator that Prosecution Witness CNAI had approached him on at least two occasions to dissuade him from testifying for the Nzabonimana defence.²
4. On 17 May 2010, the Defence obtained a statement from Witness T36 in which the witness alleged that Witness CNAI offered him 5000 US dollars³ to testify for the Prosecution, and threatened that he would suffer negative consequences if he testified for the Defence.⁴ Witness T36 also alleged that Witness CNAI was improperly recruiting other individuals to testify for the Prosecution.⁵
5. On 19 May 2010, the Defence filed a motion requesting the appointment of *amicus curiae* to investigate allegations of contempt against Prosecution Witness CNAI, and supplementary protective measures for Defence Witness T36.⁶ On 9 July 2010, the Chamber found that the Defence had provided insufficient information to warrant the

¹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Urgent Defence Motion for Protective Measures (Protective Measures Order"), 18 February 2010.

² *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Urgent Motion for Appointment of An *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 ("19 May Motion"), 19 May 2010, para.2.

³ 19 May Motion, Annex A, paras. 7, 14-16, 18.

⁴ 19 May Motion, Annex A, paras. 4-6, 10, 19, 22, 27.

⁵ 19 May Motion, Annex A, para. 21.

⁶ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Urgent Motion for Appointment of An *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 ("19 May Motion"), 19 May 2010.

7653

appointment of *amicus curiae*, and indicated the further information it believed would assist the Chamber in assessing any renewed Defence request.⁷

6. On 10 August 2010, the Defence filed an interlocutory appeal contesting the Chamber's 9 July 2010 Decision denying the appointment of *amicus curiae*.⁸ And on 28 October 2010, the Appeals Chamber filed a Decision on the Defence Interlocutory Appeal in which it found that the Trial Chamber acted within its discretion in deciding not to appoint *amicus curiae* in the circumstances.⁹
7. On 18 September 2010, the Defence obtained a second and more detailed sworn statement from Witness T36 regarding the threats made against him ("second statement").¹⁰ On 21 September 2010, the Defence obtained statements from two other persons apparently corroborating parts of Witness T36's statement.¹¹
8. On 7 October 2010, the Defence filed a confidential Motion pursuant to Rules 54, 73, 75, 77 of the Rules of Procedure and Evidence ("Rules") requesting, for the second time, the appointment of *amicus curiae* to investigate contempt allegations against Prosecution Witness CNAI. It also requested that *amicus curiae* investigate threats made against Witness T37, and the admission into evidence of a number of Gacaca records.¹²

⁷ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36, 9 July 2010 ("9 July 2010 Decision").

⁸ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Interlocutory Appeal on the Decision on Nzabonimana's Urgent Motion for Appointment of *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Supplementary Protective Measures for Witness T36 ("Interlocutory Appeal Motion"), 10 August 2010.

⁹ *Callixte Nzabonimana v. Prosecutor*, Case No. ICTR-98-44D-AR77, Decision on Callixte Nzabonimana's Interlocutory Appeal of the Trial Chamber's Decision Dated 9 July 2010 ("Interlocutory Appeal Decision"), 28 October 2010.

¹⁰ Motion, Annex D.

¹¹ Motion, Annexes E & F.

¹² *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Confidential Renewed Motion for Appointment of An *Amicus Curiae* to Investigate Contempt by Witness CNAI and for Admission of a Gacaca Record into Evidence ("Motion"), 7 October 2010.

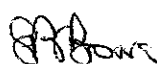
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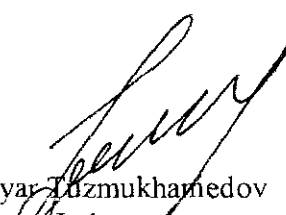
9. On 8 December 2010, the Trial Chamber granted the Defence Motion and directed the Registry to appoint *amicus curiae* to investigate the allegations made by Witness T36 and to report back to the Chamber no later than 1 April 2011.¹³
10. On 1 April 2011, the *amicus curiae* assigned by the Registrar filed a report on his findings.¹⁴ Subsequently, the Trial Chamber requested that Language Services provide a translation of the report. Having now received the relevant translation, the Trial Chamber wishes to disclose the *amicus report* to the parties, and ask for their submissions thereon before deciding whether to accept it.


FOR THESE REASONS, THE TRIAL CHAMBER

- I. **DIRECTS** the Registry to disclose the above mentioned *amicus curiae* Report to the parties as soon as practicable;
- II. **DIRECTS** the parties to file any submissions they may have on the *amicus curiae* report by 25 May 2011;
- III. **INSTRUCTS** that neither party shall respond or reply to submissions made by the opposing party in this matter.

Arusha, 13 May 2011, done in English.


Solomy Balungi Bossa
Presiding Judge


Bakhtiyar Tuzmukhamedov
Judge


Mparany Rajohnson
Judge



¹³ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Renewed and Confidential Motion for Appointment of Amicus Curiae to Investigate Allegations of Contempt of the Tribunal Against Prosecution Witness CNAI ("8 December 2010 Decision"), 8 December 2010.

¹⁴ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, REPORT OF THE AMICUS CURIAE ON ALLEGATIONS OF CONTEMPT OF TRIBUNAL BY WITNESS CNAI AND/OR A MEMBER OF THE PROSECUTION OFFICE PERTAINING TO DEFENCE WITNESS T36 ("Amicus Curiae Report"), filed 1 April 2011.