



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 5 August 2011

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

**DECISION ON PROSECUTOR'S CONFIDENTIAL MOTION FOR PROTECTIVE
MEASURES FOR WITNESS D**

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

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

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 25 February 2011, after having called 38 witnesses. The Defence closed its case on 16 June 2011, after having called 38 witnesses.

2. On 8 July 2011, the Office of the Prosecutor (“Prosecution”) filed a motion seeking to vary the rebuttal witness list to include Prosecution Witness D.¹ The Prosecution submitted that Witness D will provide evidence that is relevant, non-cumulative and probative in nature.² The Prosecution noted that the admission of Witness D to the witness list would be in furtherance of the interest of justice and the “quest to ascertain the truth.”³ The Prosecution lastly submitted that the evidence contained in Witness D’s affidavit arose *ex improviso* from the Defence case and was not reasonably foreseeable.⁴

3. On 14 July 2011, the Prosecution filed a motion seeking protective measures for Witness D.⁵ The Defence did not file a response thereto.

4. On 18 July 2011, the Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) filed its response to the Prosecution Motion for variance of its witness list.⁶ The Defence submitted that the Prosecution’s request for leave to amend the Prosecution witness list did not meet the criteria set out in Rule 73*bis* (E) of the Rules of Procedure and Evidence.⁷ The Defence further submitted that the evidence given by Witness D would impermissibly broaden the scope of the rebuttal evidence, and should, if anything, be subjected to further litigation concerning the admission of additional rebuttal evidence.⁸ The Defence lastly noted that Witness D’s affidavit did not fulfil the criteria set out under Rule 92*bis*.⁹

5. On 25 July 2011, the Prosecution filed its reply.¹⁰ The Prosecution submitted that the Defence did not file its response in a timely manner and should thus be dismissed.¹¹ The

¹ Prosecutor’s Confidential Motion for Leave to Vary the Witness List (“Prosecution Motion”), 8 July 2011.

² Prosecution Motion, paras. 32-34.

³ Prosecution Motion, para. 35.

⁴ Prosecution Motion, paras. 36-37.

⁵ Prosecutor’s Confidential Motion for Protective Measures for Witness D, 14 July 2011.

⁶ Defence Response to Prosecutor’s Confidential Motion for Leave to Vary the Witness List (“Defence Response”), 18 July 2011.

⁷ Defence Response, paras. 13-20.

⁸ Defence Response, paras. 21-26.

⁹ Defence Response, paras. 27-29.

¹⁰ Prosecutor’s Confidential Reply to Defence Response to Prosecutor’s Confidential Motion for Leave to Vary the Witness List (“Prosecution Reply”), 25 July 2011.

Prosecution further submitted that the testimony provided by Witness D falls within the scope of the rebuttal evidence, and would undermine the credibility of the Defence alibi witnesses.¹² The Prosecution noted that it sought to include Witness D's evidence in the form of a Rule 92*bis* statement, so as to further "the interests of judicial economy", while allowing the Defence the opportunity to cross-examine the Witness.¹³

6. On 28 July 2011, the Chamber rendered its Decision, denying the Prosecution Motion on the basis that Witness D's testimony would improperly broaden the scope of the rebuttal case.¹⁴

DELIBERATIONS

7. The Chamber recalls its Decision on the Prosecution's Motion, in which it declined to grant the Prosecution leave to amend its rebuttal witness list to include Witness D.¹⁵ The Chamber therefore dismisses the present submission, in which the Prosecution requests for Witness D to be granted protective measures, as moot.

FOR THESE REASONS, THE CHAMBER

DISMISSES the Prosecution Motion as moot.

Arusha, 5 August 2011, done in English.

Lee Gacuiga Muthoga
Presiding Judge

Seon Ki Park
Judge

Robert Fremr
Judge

[Seal of the Tribunal]

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signature]

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signature]

¹¹ Prosecution Reply, para. 11.

¹² Prosecution Reply, paras. 12-15.

¹³ Prosecution Reply, paras. 18-19.

¹⁴ Decision on Prosecutor's Confidential Motion for Leave to Vary the Witness List, 28 July 2011, para. 8.

¹⁵ *Ibid.*