

ICTR-98-44D-T
2-9-2011
(8578-8575)

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

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 2 September 2011

JUDICIAL RECORDS/ARCHIVES
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2011 SEP -2 A.H. 58
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THE PROSECUTOR

v.

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

DECISION ON DEFENCE MOTION FOR VIDEO-LINK TESTIMONY OF T73
(Rules 54 and 71 of the Rules of Procedure and Evidence)

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

Defence Counsel
Vincent Courcelle-Labrousse
Philippe Larochelle

1. On 10 May 2011, the Trial Chamber issued a decision in which it allowed the Defence to enter the written statements of three witnesses into the evidentiary record of the present proceedings pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”), while allowing the Prosecution to cross-examine two of those deponents during the week of 12-16 September 2011 (“92 *bis* Decision”).¹
2. On 18 August 2011, the Defence filed a motion in which it requested that the Trial Chamber hear the cross-examination of one of the 92 *bis* deponents, Defence Witness T73, by way of video-link testimony from his country of current residence (“Motion”).² The crux of the Defence Motion was that T73 was unwilling to testify at the seat of the Tribunal in Arusha due to immigration concerns in his country of current residence, as well as the spectre of persecution by certain Rwandan government authorities were he to set foot in Tanzania.
3. On 19 August 2011, the Trial Chamber issued a *proprio motu* order for expedited filings in which the Prosecution was ordered to file any response to the Motion by 22 August 2011 and the Defence was ordered to file any reply by 23 August 2011.³
4. On 22 August 2011, the Prosecution filed its response to the Defence Motion (“Response”), opposing the request for video-link and challenging the averments made by the Defence with respect to T73’s professed immigration and other legal concerns.⁴
5. On 24 August 2011, the Defence filed a request for an extension of time to file a reply to the Prosecution Response, citing the need to personally meet with T73 in order to gather information that may rebut the challenges raised by the Prosecution in its Response (“Request for Extension”).⁵
6. On 25 August 2011, the Prosecution filed a response opposing the Request for Extension.⁶

¹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana’s Motion for the Admission of Written Witness Statements, 10 May 2011.

² *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Defence Motion for Video-Link Testimony of T73, 18 August 2011.

³ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Order for Expedited Filing Deadlines in Relation to Defence Motion for Video-Link Testimony of Witness T73, 19 August 2011.

⁴ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Response to Confidential Defence Motion for Video-Link Testimony of T73, 22 August 2011.

⁵ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Extension of Time to Reply [sic] the Prosecutor’s Response to the Defence Motion for Video-Link Testimony of T73, 24 August 2011.

⁶ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor’s Response to Defence Motion for Extension of Time to Reply to the Prosecutor’s Response to the Defence Motion for Video-Link Testimony of T73, 25 August 2011.

7. On 26 August 2011, the Trial Chamber granted the Defence Request for Extension until 29 August 2011, noting the potential that such an extension may facilitate the ascertainment of truth as to the legitimacy of T73's concerns.⁷
8. On 29 August 2011, the Defence filed its reply to the Prosecution Response, in which it briefly reiterated and expanded upon T73's concerns as averred in its original Motion, and announced that as a consequence of "the Witness's mistrust and phobia for this Tribunal", it was requesting that the Trial Chamber withdraw T73's statement from the evidentiary record in the present proceedings ("Reply").⁸
9. On 1 September 2011, the Registry forwarded to the Trial Chamber correspondence from a high-ranking official in the country of T73's current residence addressed to the Registrar of the Tribunal, dated 31 August 2011, in which the said official attests, *inter alia*: that T73's request for video-link testimony would only be feasible under the law of that state in cases where a witness is physically incapable of attending Arusha; that the relevant national authorities had already taken steps to provide T73 with the requisite travel documents that would allow him to re-enter his country of residence upon completion of his testimony in Arusha; and that the national authorities of that state had already made a request for the Ministry of Foreign Affairs to provide an escort who would accompany T73 to and from Arusha for the purpose of ensuring his security.⁹
10. In view of the Defence Reply requesting the withdrawal of T73's written statement, the Trial Chamber concludes that the Defence's corresponding Motion for video-link is rendered moot. Moreover, pursuant to the request of the Defence and because the Prosecution will not have the benefit of cross-examining T73 in accordance with a prior allowance of this Chamber,¹⁰ the written statement of T73 that was previously adduced via Rule 92 *bis* shall be removed from the evidentiary record in this trial.
11. Finally, while the Defence's election to withdraw T73's statement (and thus its implicit retraction of its request for video-link) is itself dispositive of the instant Motion, the Trial Chamber wishes to underscore its displeasure at the apparent lack of diligence and/or forthrightness on the part of the Defence when it filed the instant Motion, in light of recently

⁷ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Defence Request for an Extension of Time to File Its Reply, 26 August 2011.

⁸ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Reply to Prosecutor's Reponse [sic] to "Defence Motion for Video-Link Testimony of T73", dated 18 August 2011, 29 August 2011.

⁹ Confidential correspondence to Registrar dated 31 August 2011, forwarded to Trial Chamber 1 September 2011.

¹⁰ 92 *bis* Decision, disposition.

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revealed documentation from an authoritative source that would tend to indicate that T73's professed concerns may have been overstated.

FOR THESE REASONS, THE TRIAL CHAMBER

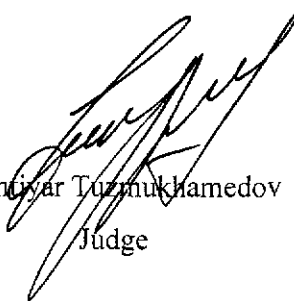
DENIES the Defence Motion;

DIRECTS the Registry to remove the written statement of Defence Witness T73 from the evidentiary record of these proceedings.

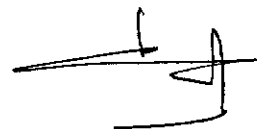
Arusha, 2 September 2011, done in English.



Solomy Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

