

ICTR-00-55C-T  
-13-9-2011  
(8181-8178)

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UNITED NATIONS  
NATIONS UNIES

**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:** 13 September 2011

**THE PROSECUTOR**

v.

**Ildéphonse NIZEYIMANA**

**CASE NO. ICTR-00-55C-T**

JUDICIAL RECORDS/ARCHIVES  
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2011 SEP 13 P 5:11

**DECISION ON URGENT DEFENCE MOTION FOR LEAVE TO CALL EVIDENCE  
IN REJOINDER**

**Office of the Prosecution:**

Drew White  
Kirsten Gray  
Yasmine Chubin  
Astou Mbow

**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 called 38 witnesses. The Defence closed its case on 16 June 2011, having called 38 witnesses. On 6 September 2011, the Chamber heard one Defence Witness, Witness BNN07. On 8 September 2011, the Prosecution completed the presentation of its evidence in rebuttal to the Defence case.

2. On 8 September 2011, the Defence team of the Accused, Ildéphonse Nizeyimana (“the Defence” and “the Accused” respectively) filed a motion for leave to present evidence in rejoinder.<sup>1</sup> The Defence submits that it has a fundamental right to call rejoinder witnesses in order to challenge the credibility of the rebuttal witnesses presented by the Prosecution.<sup>2</sup>

3. On 12 September 2011, the Office of the Prosecutor (“Prosecution”) filed its response.<sup>3</sup> The Prosecution objects to the presentation of the rejoinder evidence in its entirety and submits, *inter alia*, that the proposed witnesses in rejoinder will not present new or unanticipated evidence arising from the rebuttal case, but instead will only serve to buttress the Defence case.<sup>4</sup>

4. On 13 September 2011, the Defence filed its reply to the Prosecution Response.<sup>5</sup> The Defence submits that, contrary to the Prosecution’s assertion, the evidence presented by Witness Jean Claude Zikambahari is neither cumulative, nor collateral.<sup>6</sup>

## DELIBERATIONS

5. Rule 85 of the Rules of Procedure and Evidence (“Rules”) prescribes the sequence in which the Chamber is to receive evidence during the trial proceedings. Contrary to the Defence submission, the Rule does not create an automatic right for the Defence to present evidence in rejoinder. The Chamber enjoys a wide discretion in determining whether to grant leave to call rejoinder evidence. In exercising that discretion, the Chamber will consider

<sup>1</sup> Urgent Defence Motion for Leave to Call Rejoinder Evidence (“Defence Motion”), 8 September 2011.

<sup>2</sup> Defence Motion, paras. 6-7.

<sup>3</sup> Prosecutor’s Response to Urgent Defence Motion for Leave to Call Rejoinder Evidence (“Prosecution Response”), 12 September 2011.

<sup>4</sup> Prosecution Response, para. 15.

<sup>5</sup> Reply to Prosecution’s Response to Urgent Defence Motion for Leave to Call Rejoinder Evidence (“Defence Reply”), 13 September 2011.

<sup>6</sup> Defence Reply, paras. 9-10.

whether to limit or exclude rebuttal evidence so as to ensure the fairness of the trial and avoid needless consumption of time.<sup>7</sup>

6. The Chamber notes that the purpose of rejoinder evidence is to afford the Defence an opportunity to refute evidence of a new matter arising directly out of the Prosecution's rebuttal case.<sup>8</sup> The Chamber further recalls that Rules 54 and 98 provides the Chamber with a wide discretion to determine which measures it considers necessary to the ascertainment of the truth and the interests of justice. In exercising such discretion, it is imperative for the Chamber to balance the probative value of the evidence and the need to ensure a fair trial which necessarily includes the consideration of the goal of ascertaining the truth and the possible prejudice to the Accused.<sup>9</sup>

7. The Defence seeks to present four witnesses to refute rebuttal evidence presented by the Prosecution relating to its alibi defence.<sup>10</sup> Defence Witness KEN06 is expected to provide testimony that will contradict the evidence provided by Prosecution Witness Antoinette Bizimenyera, as well as the Accused's absence from Butare between the 20<sup>th</sup> and 22<sup>nd</sup> of April 1994.<sup>11</sup> Witness RWV17 is expected to dispute testimony given by Prosecution Witness Côtma Twagirayezu regarding the period during which the tea factory was closed and Twagirayezu's presence at the tea factory.<sup>12</sup> She is also expected to testify that the Accused stayed at the tea factory on the night of 21 April 1994 and that he was present at the factory from late April 1994 onwards.<sup>13</sup> Witness Ikaremye Deo is similarly expected to provide testimony that will contradict Prosecution Witness Antoinette Bizimenyera.<sup>14</sup> Lastly, Witness Zikambahari Jean Claude will provide testimony that will contradict that of Witness Côtma Twagirayezu.<sup>15</sup>

8. The Chamber has also considered the objections raised by the Prosecution against the Defence request to call witnesses in rejoinder. Contrary to the Prosecution's submissions, the Trial Chamber considers that the proposed evidence of Witnesses KEN06, RWV17,

<sup>7</sup> *Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-T, Decision on the Prosecutor's Motion for Leave to Call Evidence in Rebuttal Pursuant to Rules 54, 73, and 85(A) (iii) of the Rules of Procedure and Evidence (TC), 21 May 2003, para. 31.

<sup>8</sup> *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Decision on Defence Motion for Leave to Call Rejoinder Witnesses, 30 April 2002, para. 6.

<sup>9</sup> *Prosecutor v. Kristić*, Case No. IT-98-33-T, Decision on the Defence Motions to Exclude Exhibits in Rebuttal and Motion for Continuance (TC), 4 May 2001, para. 16.

<sup>10</sup> Defence Motion, para. 10.

<sup>11</sup> Defence Motion, paras. 13-22.

<sup>12</sup> Defence Motion, paras. 24-25.

<sup>13</sup> Defence Motion, paras. 23-28.

<sup>14</sup> Defence Motion, paras. 29-35.

<sup>15</sup> Defence Motion, paras. 36-38.

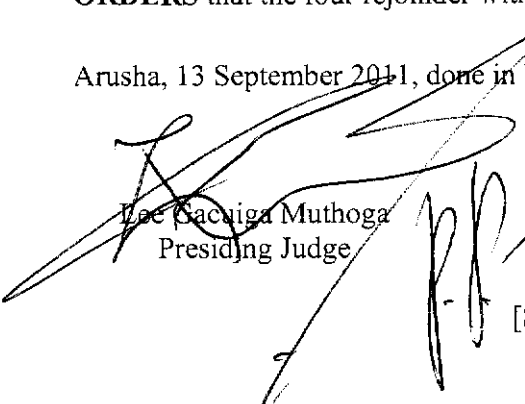
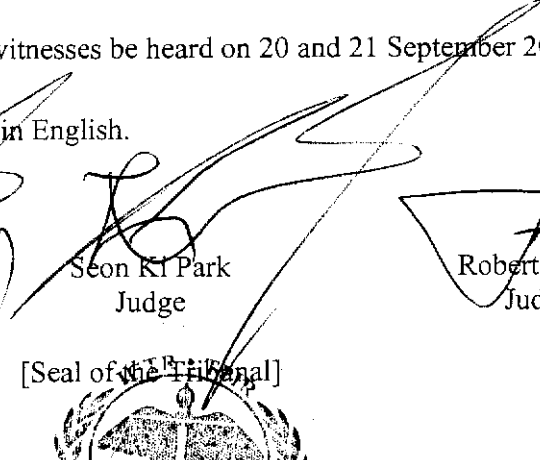
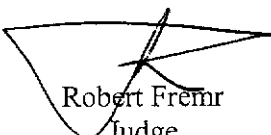
Ikaremye and Zikambahari to be relevant and has probative value, and is not of a cumulative nature. For these reasons, the Trial Chamber considers it in the interests of justice to allow the four rejoinder witnesses to testify in response to the rebuttal evidence concerning the whereabouts of the Accused on the morning of 21 April 1994 to the late afternoon of 22 April 1994 and from 26 April 1994 to on or about 17 May 1994.

**FOR THESE REASONS, THE CHAMBER**

**GRANTS** the Defence Motion; and

**ORDERS** that the four rejoinder witnesses be heard on 20 and 21 September 2011.

Arusha, 13 September 2011, done in English.

The Gasiga Muthoga  
 Presiding Judge

Seon Ki Park  
 Judge

Robert Freimr  
 Judge

[Seal of the Tribunal]

