



ICTR-99-54-T
(04-04-2012)
(109819 - 109816)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

109819
Mueamp

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Solomy Balungi Bossa
Judge Mparany Rajohnson

Registrar: Mr. Adama Dieng

Date: 4 April 2012

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

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**DECISION ON PROSECUTOR'S EXTREMELY URGENT MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE TO DEFENCE MOTION FOR
LEAVE TO CALL REJOINDER WITNESSES AND IN THE ALTERNATIVE,
FOR ADMISSION OF DOCUMENTARY REJOINDER EVIDENCE AND TO
RECALL PROSECUTION WITNESS PRWVII**

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Rashid Rashid
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Ms. Faria Rekkas

Defence Counsel

Ms. Mylène Dimitri
Mr. Claver Sindayigaya
Mr. Deogratias Sebureze
Ms. Anne-Gaëlle Denier
Mr. Gregg Shankman

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Solomy Balungi Bossa and Mparany Rajohnson (the "Chamber");

BEING SEIZED of the "Prosecutor's Extremely Urgent Motion for Extension of Time to File Response to Defence Motion for Leave to Call Rejoinder Witnesses and, in the Alternative, for Admission of Documentary Rejoinder Evidence and to Recall Prosecution Witness PRW VII," filed on 3 April 2012 (the "Prosecution Motion");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the Motions pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs filed by the Defence.

INTRODUCTION

1. On 2 April 2012, the Defence filed a Motion for Leave to Call Rejoinder Witnesses and, in the Alternative, for Admission of Documentary Rejoinder Evidence and to Recall Prosecution Witness PRW VII. (the "Defence Rejoinder Motion")¹
2. On 2 April 2012, the Chamber issued a directive to the Parties to file the response within five days and the reply within five days from the receipt of the response.²
3. On 3 April 2012, the Prosecutor filed an Extremely Urgent Motion for extension of time to file response to Defence motion for leave to call rejoinder witnesses and in the alternative, for admission of documentary rejoinder evidence and to recall Prosecution Witness PRW VII.³
4. On 3 April 2012 the Chamber instructed the Defence that they had one day to respond to this Motion.⁴
5. On 4 April 2012, the Defence indicated that they would not file a response to the Prosecution Motion.⁵

¹ Defence Motion for Leave to Call Rejoinder Witnesses and, in the Alternative, for Admission of Documentary Rejoinder Evidence and to Recall Prosecution Witness PRWVII, filed on April 2012.

² Memo from the Chamber, informing the parties on the dates to file the response and reply to the Defence Rejoinder Motion, 2 April 2012.

³ Prosecutor's Extremely Urgent Motion For Extension Of Time To File Response To Defence Motion For Leave To Call Rejoinder Witnesses And In The Alternative, For Admission Of Documentary Rejoinder Evidence And To Recall Prosecution Witness PRW VII, filed on 3 April 2012. (Prosecution Motion).

⁴ Memo from the Chamber, informing the Defence when to respond to the Prosecution's Motion, Defence Extremely Urgent Motion for Extension of the Number of Words Allowed for the Closing Brief, for Modification of the Dates for Oral Closing Arguments, for Clarification on the Scheduling Order, or for Ancillary Request for Variation of a Directive in the Scheduling Order 3 April 2012.

PROSECUTION SUBMISSIONS

6. The Prosecution submits that the subject matter of the Defence Rejoinder motion is important and crucial because it goes to counter the evidence brought by the Prosecution during the rebuttal phase of the trial.⁶

7. It states that the Defence Rejoinder motion has many arguments and submissions and has made specific references to trial records in support of its motion. Further the Prosecution contends that the multiplicity of submissions has made the Rejoinder motion sizable, in terms of substantive issues which affect the Defence alibi case and the overall outcome of the trial.⁷

8. The Prosecution asserts that the Defence in its Rejoinder Motion attached a variety of documents from a so-called forensic expert, communication and letters from Swaziland and Senegal and will-says from four proposed rejoinder witnesses. The Defence also requests for leave to bring a forensic expert and the Prosecution needs to make an informed legal decision as to whether or not at this stage the Defence can bring forensic evidence under Rule 94*bis*.⁸

9. Finally the Prosecution argues that the Defence motion as it is written, includes alternate requests thereby making it three distinct motions rolled into one motion.⁹

10. In view of the above reasons and taking into account the holidays from 6 to 9 April 2012, the Prosecution is seeking an extension of time to Friday, 13 April 2012 within which to carry out extensive research and file a response to the Defence Rejoinder motion.¹⁰

DELIBERATION

11. The Chamber considers that the Prosecution has demonstrated good cause for an extension of time, in that the Defence Rejoinder Motion raises a number of issues and also due to the Easter holidays. The Chamber hereby grants the Prosecution an extension until 13 April 2012 to file its response to the Defence Rejoinder Motion. In the interest of justice, the Chamber orders the Defence to file its Reply, if any on or before 24 April 2012.

⁵Mail from Defence Counsel, dated 4 April 2012.

⁶Prosecution Motion para. 6.

⁷*Id.*, para. 7.

⁸*Id.*, paras. 8-9.

⁹*Id.*, para. 10.

¹⁰*Id.*, paras. 11-13.

