



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 21 June 2012

ICTR-99-54-T
21st June 2012
(111219 - 111215)

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

JUDICIAL RECORDS/REGISTRAR'S OFFICE
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**DECISION ON DEFENCE MOTION TO AUTHORIZE THE LEAD COUNSEL
TO DO ORAL PLEADINGS VIA VIDEO-LINK**

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[Signature]

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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 “Defence Extremely Urgent Motion to Authorize the Lead Counsel to Do Oral Pleadings of 18-19 June 2012 Via Video-Link”, filed on 25 May 2012 (the “Defence Motion”);

CONSIDERING:

- (a) The “Prosecution’s Consolidated Response to Defence Motion for 1) Certification to Appeal the Trial Chamber’s Decision on the Prosecution Motion for Leave to Reopen Prosecution Rebuttal Case; 2) Defence Motion for Certification to Appeal and/or Reconsider the Trial Chamber’s Decision on the Defence Motion for Leave to Present Rejoinder Evidence; and 3) Defence Extremely Urgent Motion to Authorize Lead Counsel to Do Oral Pleadings Via-Video Link”, filed on 29 May 2012 (the “Prosecution Response”);
- (b) The “Registry’s Submission Under Rule 33 (B) of the Rules on the Feasibility of Having Video-Link Hearing from a Location in Montreal, Canada on 18-19 June 2012”, filed on 31 May 2012;
- (c) The “Defence Reply to the Prosecution’s Consolidated Response to Defence Motion for 1) Certification to Appeal the Trial Chamber’s Decision on the Prosecution Motion for Leave to Reopen Prosecution Rebuttal Case; 2) Defence Motion for Certification to Appeal and/or Reconsider the Trial Chamber’s Decision on the Defence Motion for Leave to Present Rejoinder Evidence; and 3) Defence Extremely Urgent Motion to Authorize Lead Counsel to Do Oral Pleadings Via-Video Link”, filed on 1 June 2012 (the “Defence Reply”);
- (d) The “Additional Submissions to the Defence Extremely Urgent Motion to Authorize the Lead Counsel to Do Oral Pleadings Via Video-Link”, filed on 11 June 2012 (the “Defence Additional Submissions”); and
- (e) The “Registrar’s Submissions on the Feasibility of Having Video-Link Hearing from a Location in Montreal, Canada on 23-24 July 2012”, filed on 19 June 2012 (the “Registrar’s Submission”);

CONSIDERING also the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Defence Motion pursuant to Rule 54 of the Rules.



INTRODUCTION

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1. On 27 March 2012, the Parties made oral submissions regarding the timing of the Closing Arguments.¹
2. On 29 March 2012, the Chamber issued the “Scheduling Order for Closing Briefs and Arguments” (the “Scheduling Order”), which ordered Closing Arguments to be heard on 18 and 19 June 2012.²
3. On 20 April 2012, the Chamber granted in part a Defence Motion to vary the Scheduling Order, but denied the Defence’s request to alter the scheduling of Closing Arguments.³
4. On 25 May 2012, the Defence filed the present Motion.
5. On 7 June 2012, the Chamber rendered an oral decision rescheduling the date of Closing Arguments to 23 and 24 July 2012 to accommodate further testimony of Witness PRWIII.⁴
6. On 11 June 2012, the Defence filed Additional Submissions to clarify that its position in the present Motion applies equally to the rescheduled dates for Closing Arguments.⁵
7. On 18 June 2012, the Chamber denied the Defence Motion for certification to appeal the scheduling of the Closing Arguments.⁶
8. On 19 June 2012, the Registry filed submissions indicating that an appropriate facility for video-link had been found, and that the Canadian authorities provided the relevant contact information for the person with whom final arrangements could be made.⁷

SUBMISSIONS OF THE PARTIES

Defence Motion

9. The Defence requests that Lead Counsel be permitted to conduct Closing Arguments via video-link from Montréal, Canada. The Defence submits that Lead Counsel will be unable to travel to Arusha for compelling health reasons.⁸

¹ T. 27 March 2012, pp. 5-7.

² Scheduling Order for Closing Briefs and Arguments (TC), 29 March 2012.

³ Decision on Defence Motion for Variation to Scheduling Order for Closing Briefs and Arguments (TC), 20 April 2012 (“Decision of 20 April 2012”), p. 7.

⁴ T. 7 June 2012, pp. 4-5.

⁵ Defence Additional Submissions, paras. 8-10.

⁶ Decision on Defence Motion for Certification to Appeal the Decision on the Scheduling of Closing Arguments (TC), 18 June 2012 (“Decision of 18 June 2012”), p. 6.

⁷ Registrar’s Submissions, paras. 6-7.

⁸ Defence Motion, paras. 7, 9-10, 32-33, 36, 38, 40.

10. According to the Defence, the Accused has expressed serious concern about the absence of Lead Counsel during Closing Arguments because she has worked with him since the beginning of the trial. The Defence further submits that Lead Counsel bears professional responsibility for the defence of the Accused to finality of the trial process, that Lead Counsel must abide by the Accused's decisions concerning representation, and that she is willing to do so.⁹

11. The Defence maintains that Closing Arguments are fundamentally important to safeguarding the rights of the Accused, and it is therefore in the interest of justice to accommodate the participation of Lead Counsel. The Defence argues that the inability of Co-Counsel to adequately prepare for Closing Arguments will result in a violation of the Accused's right to a fair trial, and that video-link is "the least harmful solution" to respect the Accused's rights and the rights of Lead Counsel.¹⁰

12. In support of this Motion, the Defence recalls a similar circumstance in another case in which participation via telephone link for Closing Arguments was permitted.¹¹

Prosecution Response

13. The Prosecution makes no submission with respect to the Defence's request.¹²

Defence Reply

14. The Defence notes the Prosecution's non-opposition to the relief requested in the Motion.¹³

Defence Additional Submissions

15. The Defence requests that Lead Counsel be authorized to participate in the proceedings from Montréal, Canada, on 23 and 24 July 2012. The Defence states that the grounds for Lead Counsel's inability to travel to Arusha on 18 and 19 June 2012 apply also to 23 and 24 July 2012.¹⁴

DELIBERATIONS

16. As a preliminary matter, the Chamber notes that the Defence filed additional submissions and explained its exceptional reason for doing so.¹⁵ The Chamber considers that this was appropriate under these particular circumstances, and has taken the Defence Additional Submissions into account.

⁹ *Id.*, paras. 13, 16-17, 19-20.

¹⁰ *Id.*, paras. 11-13, 15, 21-31, 38.

¹¹ *Id.*, paras. 14, 34-35 (discussing the *Karemera et al.* case).

¹² Prosecution Response, para. 1. See also *id.*, p. 18.

¹³ Defence Reply, para. 4. See also *id.*, para. 53.

¹⁴ Defence Additional Submissions, paras. 8-10.

¹⁵ Defence Additional Submissions, paras. 5-6.

17. The Chamber also notes that the Prosecution does not object to the participation of Lead Counsel in the Closing Arguments via video-link.¹⁶

18. The Chamber recalls that at least one other case before the Tribunal has heard closing submissions via audio-link in order to enable long distance participation of Counsel due to a medical condition.¹⁷ In the instant case, the Chamber recognizes that Lead Counsel's inability to participate in the proceedings in Arusha is due to her health condition.

19. The Chamber further notes that the Registry has secured the cooperation of the relevant authorities in Canada to establish the video-link on the dates scheduled for Closing Arguments and that allowing Lead Counsel to participate in Closing Arguments via video-link will not cause any unnecessary delay in the proceedings.

20. The Chamber recalls its previous Decisions of 20 April 2012 and 18 June 2012 on this matter, and reiterates that the Defence Co-Counsel should be competent to handle the Closing Arguments.¹⁸ The Chamber underscores that in the event Lead Counsel is prevented for any reason from participating in the Closing Arguments via video-link on the scheduled dates, Co-Counsel should remain prepared to assume this responsibility.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence Motion; and

DIRECTS the Registry to establish a video-link with Montréal, Canada in order to enable the participation of Defence Lead Counsel in the Closing Arguments on 23 and 24 July 2012.

Arusha, 21 June 2012



William H. Sekule
Presiding Judge



Solomy Balungi Bossa




Mparany Rajohnson
Judge

¹⁶ Prosecution Response, para. 1.

¹⁷ *Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T ("*Karemera et al.*"), T. 25 August 2011, p. 2 (commencing submissions by the Prosecution Senior Trial Attorney). See also *Karemera et al.*, T. 22 August 2011, p. 1 (stating that the Prosecution Senior Trial Attorney was following the proceedings online); *Karemera et al.*, Decision on the Prosecutor's Motion for Clarification of the Scheduling Order for Closing Arguments (TC), 16 August 2011, para. 4.

¹⁸ See Decision of 20 April 2012, para. 24. See also Decision of 18 June 2012.