



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

111396
Ju

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 2 July 2012

ICTR-99-54-T
2nd July 2012
(111396-111392)

The PROSECUTOR

v.

Augustin NGIRABATWARE

Case No. ICTR-99-54-T

JUDICIAL RECORDS ARCHIVES
UNICTR
2012 JUN 32 P 5:21
[Signature]

DECISION ON DEFENCE MOTION FOR LEAVE TO POSTPONE THE CROSS-
EXAMINATION OF WITNESS PRVIII

Office of the Prosecutor

Mr. Wallace Kapaya
Mr. Patrick Gabaake
Mr. Iskandar Ismail
Mr. Kristian Douglas
Ms. Sonja Sun
Ms. Mankah Fombang
Ms. Faria Rekkas

Defence Counsel

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

[Handwritten signature]

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 for Leave to Postpone the 2 July 2012 Cross-Examination of Prosecution Rebuttal Witness PRWIII”, filed confidentially and with *ex parte* annexes on 26 June 2012 (the “Defence Motion”);

CONSIDERING:

- (a) The “Prosecution’s Response to Defence Extremely Urgent Motion for Leave to Postpone the 2 July 2012 Cross-Examination of Prosecution Rebuttal Witness PRWIII”, filed on 27 June 2012 (the “Prosecution Response”); and
- (b) The “Defence Reply to the Prosecution’s Response to Defence Extremely Urgent Motion for Leave to Postpone the 2 July 2012 Cross-Examination of Prosecution Rebuttal Witness PRWIII”, filed confidentially and with an *ex parte* annex on 28 June 2012 (the “Defence Reply”);

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 Articles 19 and 20 of the Statute and Rules 54 and 73 of the Rules.

INTRODUCTION

1. On 5 June 2012, Prosecution Rebuttal Witness PRWIII commenced his testimony and produced visa stamps that were said to be in use in 1994, 2000 and 2005. The impressions of these stamps were admitted into evidence as Prosecution Exhibit 93.¹

2. On 6 June 2012, the Defence asked the Chamber to postpone the cross-examination of Witness PRWIII for a minimum of three months, in order to allow the Defence to investigate these stamps.² The Chamber reserved its ruling as to whether additional time might be provided in relation to the stamps, but ordered that the Defence conduct its cross-examination on all other issues.³

3. On 7 June 2012, the Chamber granted the Defence request in part and ordered that all necessary arrangements be made for Witness PRWIII to return to Arusha to complete, on 2 July 2012, his cross-examination on the specific issue of the stamp impressions entered into evidence as Prosecution Exhibit 93.⁴

¹ See, for example, T. 7 June 2012, p. 4.

² T. 6 June 2012, pp. 46-49 (CS).

³ *Id.*, pp. 51-52 (CS).

⁴ T. 7 June 2012, pp. 4-5.



4. From 12 to 19 June 2012, the Defence sent *Notes Verbales* to a number of States and to one institution requesting assistance with investigations of the stamps.⁵
5. On 26 June 2012, the Defence filed the present motion.
6. On 2 July 2012, the Registry informed the Chamber and the Parties that Witness PRVIII was scheduled to arrive in Arusha later that day.

SUBMISSIONS OF THE PARTIES

Defence Motion

7. The Defence prays that the Chamber postpone the cross-examination of Witness PRVIII for a minimum of three months and, if any event, “not until the Defence obtains full cooperation from the targeted States and Institutions”. The Defence further asks for a stay of the proceedings until a determination of its Motion.⁶
8. The Defence submits that, despite its best efforts, several States and institutions have not responded to the *Notes Verbales* or require more time to comply with the requests, and that Defence delegations sent abroad were similarly unable to retrieve the requested information.⁷ In the Defence’s opinion, three weeks is an insufficient amount of time to conduct meaningful investigations where international cooperation and missions abroad are involved. The Defence claims that proceeding with Witness PRVIII’s cross-examination without completion of the Defence investigations will undermine the Accused’s right to a fair trial.⁸
9. The Defence further submits that the stamps should have been disclosed well in advance of Witness PRVIII’s testimony, and that this late disclosure necessitates additional time to conduct further investigations.⁹

Prosecution Response

10. The Prosecution asks the Chamber to dismiss the Defence Motion and submits that the Defence has had sufficient time to prepare its cross-examination of Witness PRVIII. In the Prosecution’s opinion, the Defence was given ample notice that the witness would produce evidence concerning the relevant visa stamps.¹⁰ The Prosecution also recalls that the Chamber denied a previous attempt by the Defence to postpone cross-examination while cooperation requests remained pending, and the Prosecution submits that a similar approach should be applied in the present scenario.¹¹

⁵ See Defence Motion, *Ex Parte* Annexes A-N.

⁶ Defence Motion, paras. 38, 51

⁷ *Id.*, paras. 24, 28, 39-45. See also *id.*, *Ex Parte* Annexes O-U, X-Y.

⁸ *Id.*, paras. 25-27, 29-30, 34-35, 38, 46-50. See also *id.*, para. 37, *Ex Parte* Annex W.

⁹ *Id.*, paras. 31-33, 36.

¹⁰ *Id.*, paras. 18-20.

¹¹ Prosecution Response, p. 2, paras. 21-28, discussing Decision on Defence Urgent Motion to Postpone the Testimony of Witness ANAC (TC), 12 March 2010.

3 

11. The Prosecution adds that it has no objection should the Chamber wish to grant additional time to ensure that Witness PRVIII is available after 2 July 2012 should he not be available on that date.¹²

Defence Reply

12. The Defence replies that it should have been notified about the relevant stamps that were in use in 1994 and in 2000-2005. The Defence submits that it was first informed about the latter only on 4 June 2012.¹³

13. The Defence further notes that the Prosecution failed to address the steps taken to respect the time frame given by the Chamber, asserting that the preparation of Witness PRVIII's cross-examination is entirely dependent on the cooperation requests initiated by the Defence.¹⁴

14. The Defence also reiterates that while the Chamber has a certain level of discretionary power, it must always respect the rights of the Accused, and emphasizes that the current circumstances prevent it from conducting a full investigation.¹⁵

15. The Defence finally submits that the Prosecution argument about further time for Witness PRVIII's testimony is misplaced and speculative.¹⁶

DELIBERATIONS

16. The Chamber recalls that it has discretion in the scheduling of proceedings before it. This discretion, however, is not unlimited. Article 20 (4)(b) of the Statute guarantees that the Accused shall enjoy adequate time to prepare his defence. The Chamber is aware that it has an obligation to balance this right alongside the need for an expeditious trial.¹⁷

17. The Chamber recalls that in its Oral Decision of 7 June 2012 it ruled that the Defence request for three months was excessive and instead granted the Defence an additional time of approximately 3 weeks, until 2 July 2012, to investigate the stamps in question. In rendering this Decision, the Chamber took into consideration that this was "not a new matter that would warrant an additional three months to prepare for effective cross-examination."¹⁸

18. The Chamber observes in the present motion that several of the Defence's requests for information appear to fall outside the scope of the cross-examination envisioned for 2 July 2012.¹⁹ On 6 June 2012, the Chamber ruled that the Defence was to commence and complete its cross-examination of Witness PRVII on "all other matters" except for the specific issue of the

¹² Prosecution Response, para. 29. See also *id.*, para. 13.

¹³ Defence Reply, paras. 6-9.

¹⁴ *Id.*, paras. 15-16. See also *id.*, para. 4, *Ex Parte Annex*.

¹⁵ *Id.*, paras. 10-13, 17-18.

¹⁶ *Id.*, paras. 19-20.

¹⁷ See, for example, Decision on Augustin Ngirabatware's Appeal of Decisions Denying Motions to Vary Trial Date (AC), 12 May 2009, paras. 22-23, 27.

¹⁸ T. 7 June 2012, pp. 4-5.

¹⁹ See, for example, Defence Motion, *Ex Parte Annexes A, J*.

visa stamps.²⁰ Furthermore, on 7 June 2012, the Chamber decided that Witness PRVIII will return to testify “on the specific issues of the stamp impressions”.²¹ In this regard, the Chamber notes that the witness’s examination-in-chief, cross-examination and any re-examination with regard to all other matters has been completed.²² As such, the Chamber notes that the Defence has expended time and resources investigating matters that could have been investigated sooner, and in any event do not appear to be relevant to the specific issues of the stamps.

19. The Chamber further notes that the Defence appears to have started some investigations into these stamps as early as March 2012, and this timeframe combined with the additional weeks provided in the Oral Decision of 7 June 2012, would have given the Defence sufficient time to obtain any necessary information.²³

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

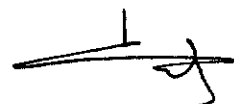
Arusha, 2 July 2012



William H. Sekule
Presiding Judge



Solomy Balungi Bossa
Judge



Mparany Rajohnson
Judge



²⁰ T. 6 June 2012, pp. 51-52 (CS).

²¹ T. 7 June 2012, p. 5.

²² T. 8 June 2012, pp. 50-51 (CS).

²³ See Disclosure of Willsay of PRW III and Relevant Documents, 4 June 2012, p. 6 (containing part of a Defence letter dated 12 March 2012, in which the Defence seeks samples of the visa stamps in use in 1994 and from 2000 to 2005). See also *id.*, p. 4. See further T. 7 June 2012, pp. 3-5 (Oral Decision taking into account the Prosecution Motions and disclosures of 4 October 2011, 11 April 2012, 7 May 2012 and 14 May 2012, and granting in part the Defence Motion).