



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
11-07-08
(67765-67781)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

67765
PM

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr. Adama Dieng

Date: 11 July 2008

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON SAGAHUTU'S SECOND REQUEST FOR VARIATION OF HIS
WITNESS LIST**

Office of the Prosecutor:

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Mr. Christopher Black and Mr. Vincent Lurquin for **Augustin Ndingiliyimana**
Mr. Charles Taku and Ms. Beth Lyons for **François-Xavier Nzuwonemeye**
Mr. Fabien Segarwa and Mr. Seydou Doumbia for **Innocent Sagahutu**

67784

INTRODUCTION

1. The Defence for Sagahutu filed an initial list of 66 witnesses with his Pre-Defence Brief on 15 March 2007. On 20 November 2007 and 7 March 2008 the Chamber ordered the Defence for Sagahutu to reduce its witness list.¹ In accordance with that Order, the Defence submitted this motion on 22 May 2008.² On 26 May 2008, the Chamber decided Sagahutu's first motion to vary his witness list and granted the replacement of expert Witness Jacques Duvivier with Dr. Helmut Strizek.³

2. The Defence now requests the removal of 28 witnesses from its original list of 66, including Witnesses KNS, TGNS, SEMS, CRS, MMS, BKS, RMS, RAS, RCS, CANS, FKS, SKS, SNS, CBBS, FGS, BKLS, SADS, SANS, SATS, DCSS, DCNS, GNS, ZAMS, ZANS, HBSS, GBS, UBS, as well as Jacques Duvivier.

3. The Defence also requests the Chamber permit it to add eight new witnesses: CBHS, FMS, CBAS, DNS, FVS, FPS, CBJA, and Dr. Helmut Strizek.

DELIBERATIONS

(i) Variation of the Witness List

4. Rule 73 *ter* (E) permits the Defence, after its case has started, to request the Chamber for leave to vary its decision as to which witnesses it intends to call, if it considers it to be in the interests of justice. In a case with multiple accused, the Defence case as a whole effectively starts with the presentation of the defence of the first accused.⁴ The jurisprudence directs that the evaluation of the interests of justice requires a close examination of each witness and the their proposed testimony, including: the sufficiency and time of disclosure of the witness' information, the materiality and probative value in relation to existing witnesses and allegations in the indictment, the potential for cross-examination, as well as the justification provided by the Defence. Additional factors to be considered include: the complexity of the case, the potential prejudice to the opposing party, and the creation of delays in the proceedings.⁵

5. To begin with, the Chamber notes that Witness Jacques Duvivier has already been removed from the witness list and Dr. Helmut Strizek added to the list. This leaves a total number of 27 witnesses to be withdrawn and seven witnesses to be added.⁶ The Chamber grants the Defence request to withdraw the 27 witnesses from its witness list in compliance with the Chamber's prior order requesting the Defence to reduce the number of its witnesses. The Chamber will decide on the request concerning the seven remaining witnesses.

¹ Scheduling Order Following the Status Conference of 5 and 6 March 2008, 7 March 2008.

² *Requête du Capitaine Innocent Sagahutu en variation des listes des témoins*, filed on 22 May 2008.

³ Decision on Sagahutu's Motion to Vary his Witness List, 26 May 2008.

⁴ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Alphonse Nteziryayo's Motion to Modify His Witness List (TC), 14 July 2006, para. 24.

⁵ *Prosecutor v. Nindiliyimana et al.*, Decision on Sagahutu's Motion to Vary his Witness List (TC), 26 May 2008, para. 5; *Prosecutor v. Nindiliyimana et al.*, Decision on Augustin Bizimungu's Motion to Vary his Witness List (TC), 24 October 2007, para. 3; *Prosecutor v. Nindiliyimana et al.*, Decision on Nzuwonemeye's Motion to Request to Vary his Witness List (TC), 31 January 2008, para. 3; *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motions for Additional Time to Disclose Witness' Identifying Information, to Vary its Witness List and for Video-Link Testimony and on the Prosecution's Motion for Sanctions (TC), 11 September 2007, para. 10. (All citations omitted).

⁶ Decision on Sagahutu's Motion to Vary his Witness List, 26 May 2008.

67763

6. Witnesses CBAS and ZATS propose to testify about Camp Kigali and the death of the Belgian UNAMIR soldiers. The Chamber notes that Witnesses BEMS, FHS, RUS, CBMS, FCS, CBFS, and SAAS are already slated to testify on the same issue. The Chamber recalls the importance of this event as a charge against the Accused, but finds that it would be excessive to call nine witnesses to testify on the same incident. Further, the Chamber has already heard a number of witnesses on this issue from the Defence for Nzuwonemeye. The Chamber grants the request but orders the Defence to reduce the overall number of witnesses it intends to call to testify on Camp Kigali and the killing of the UNAMIR soldiers to no more than five.

7. Witnesses CBHS and CBJJ propose to testify about roadblocks and will also state that the roadblocks were not jointly manned by the militia and military. The Chamber notes that Witness CIMS and Witness HANS are also slated to testify that some roadblocks did not exist in April 1994, and that those that did exist had nothing to do with the military. Witnesses CBHS and CBJJ also propose to testify about RPF infiltrations. Witness CBHS will additionally testify on the military efforts to stop pillages in Kigali. The latter issues are expected to be discussed by other witnesses on the witness list.⁷ In light of this information, the Chamber will permit the Defence to choose either Witness CBHS or Witness CBJJ to be added to the witness list, but finds the addition of both these witnesses to be excessive.

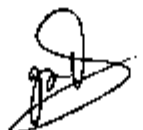
8. Witness FMS proposes to testify about the organization of the Rwandan Armed Forces (RAF) including the function and responsibilities held by the Accused in Kigali in 1994, as well as about the absence of any connection between the Accused and RTLM. The Chamber notes that excessively, Witnesses FHS, BTS, UDS, FCS, the Accused are already listed to testify about the structure of the RAF and the RECCE Battalion. Further, Witnesses RJS and CSS are expected to testify that the Accused had no connection to the RTLM. Due to the repetitive nature of the proposed testimony, the Chamber rejects the request to add Witness FMS to the witness list.

9. Witness FVS proposes to testify on the killings ordered by *conseiller* of Bilyogo *secteur* and carried out by militia rather than soldiers from Camp Kigali, as well as on the Accused's reputation in 1994. The Chamber notes that there was testimony alleging killings and rapes by soldiers at roadblocks and at a Protestant church in Bilyogo *secteur* close to Camp Kigali.⁸ Due to the vantage point of this particular witness in the *secteur* and the allegations against the Accused, the Chamber permits the addition of this witness to the witness list.

10. Witness FPS proposes to testify about the chaos following the President's plane crash on 6 April 1994, the subsequent general behaviour of the Presidential Guard, and on the roadblocks spontaneously erected by civilians. The Chamber notes that the Accused is not charged with specific acts performed by the Presidential Guard, and therefore finds it unnecessary to hear this witness' testimony. The Chamber denies the Defence request to add Witness FPS to the witness list.

⁷ Witnesses proposed to testify on RPF infiltrations and action include: KHS, SECS, KMS, CIMS, CINS, SWNS, DMS, SIS, CBUS, BPS, SAMS, HANS, CBHS and/or CBJJ; Witnesses proposed to testify on the pillaging and prevention of the pillaging in Kigali include: BKKS, DMS, CBMS.

⁸ See for example Prosecution Witness UB.



11. Witness DNS is expected to testify solely on the Accused's character from April to July 1994. The Chamber notes that Witnesses RKS and RVS are also scheduled to testify solely on the Accused's character, while Witnesses FVS, SWNS, RJS, RNS, FSS, and SMS are expected to testify in part on the Accused's character as well. The Chamber finds this amount of character witnesses to be excessive. Therefore, the Chamber, denies the addition of Witness DNS to the Witness list since a number of other witnesses are expected to testify on the Accused's character.

(ii) Number of Witnesses

12. The Trial Chamber has the discretion to order the Defence to decrease its number of witnesses after reviewing the expected content of the testimony as well as the number of other witnesses expected to testify on the same issues.⁹ The Chamber must provide its reasons for issuing such an order bearing in mind the Accused's ability to present an adequate defence.¹⁰ Further, the Chamber has a duty to ensure the fairness and expeditiousness of the trial, while taking into account the interests of the accused, particularly in cases of multiple accused.¹¹

13. The Chamber notes that besides the excessive number of witnesses mentioned above, there are 13 witnesses who are expected to testify in whole or in part to the actions of the RPF from April to July 1994.¹² The Chamber finds that this number of witnesses on the same subject is excessive. The Chamber further reminds the Defence that the RPF is not on trial in this case and to constrain the scope of the testimony of its witnesses to defending the charges against the Accused.

14. Similar to the approach taken with the Defence for Nzuwonemeye, the Chamber will not at this time make a specific order as to how many witnesses altogether the Accused should call in order to mount an adequate Defence.¹³ The Chamber, however, orders the Defence to continue to reduce its overall list in accordance with the findings above.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence motion in part and permits the withdrawal of Witnesses KNS, TGNS, SEMS, CRS, MMS, BKS, RMS, RAS, RCS, CANS, FKS, SKS, SNS, CBBS, FGS, BKLS, SADS, SANS, SATS, DCSS, DCNS, GNS, ZAMS, ZANS, HBSS, GBS, and UBS and permits the addition of Witnesses CBAS, ZATS, and FVS as well as either CBHS or CBJS.

DENIES the remainder of the Motion;

⁹ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List (AC), 21 August 2007, para. 16.

¹⁰ *Id.*

¹¹ *Id.*; see also: *Prosecutor v. Nindiliyimana et al.*, Decision on Nzuwonemeye's Request to Vary his Witness List (TC), 31 January 2008, para. 6.

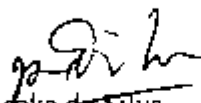
¹² KHS, SECS, KMS, CIMS, CINS, SWNS, DMS, SIS, CBUS, BPS, SAMS, HANS, CBHS and/or CBJS.

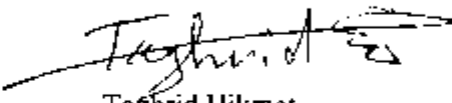
¹³ *Prosecutor v. Nindiliyimana et al.*, Decision on Nzuwonemeye's Request to Vary his Witness List (TC), 31 January 2008, para. 11.

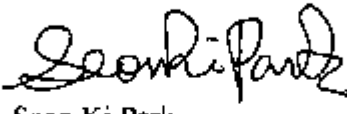
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ORDERS that the witness list as a whole be reduced as indicated and that the revised witness list be filed by 1 August 2008.

Arusha, 11 July 2008


Ayoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

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