



MINUTES OF PROCEEDINGS PROCES-VERBAL D'AUDIENCE

Rule 35 of the Rules of Procedure and Evidence / Art. 44 of the Directive for the Registry on Court Management
Art. 35 Règlement de Procédure et de Preuve / Art. 44 Directive au Greffe sur l'Administration des Chambres

Case Name: 'Ngirabatware.'
Case No: ICTR-99-54-T
Chamber: Two
Courtroom: Two

Before / Devant: **Judge William H. Sekule**, Presiding, Judge Solomy B. Bossa and Judge Mparany Rajohnson.

Prosecution / Poursuite: W. Kapaya, P. Gabaake, M. Rashid, I. Ismail, S. Sun, M. Kalisa, J-B. Nsanzimfura, E. Hightower (*Intern*), F. Murangwa (*Intern*).

Accused / Accusés: Augustin Ngirabatware.

Defence / La Défense: P. Herbert, M. Dimitri, D. Sebureze, J. Baragahoranye, G. Shankman, N. Bambhra (*Intern*), A. Babin (*Intern*).

Registry / Greffe: Constant Hometowu, John Tumati

Date: Wednesday, 26 October 2011.

Trial Day 129

1. Remarks / Remarques

- a Defence Co-Counsel (Ms. Dimitri) produced an original copy of a photograph to be compared with the color photocopy earlier produced in court and proposed that the copy be admitted into evidence.
- b Prosecution Trial Attorney (Mr. Rashid) did not oppose the application. He noted that he inspected the coloured copy of the picture and confirmed that it is a faithful reproduction of the original. (Please see the Chamber's decision at paragraph 2 (a) below).
- c Ms. Dimitri informed the Chamber that the next witness, DWAN-53 (DW31), was willing to waive protective measures and testify in his own name and in open court. DWAN-53 confirmed before the Chamber that he was willing to testify in his own name, Mr. Jean Baptiste Byilingiro, and the Chamber lifted the protective measures.
- d Ms. Dimitri commenced and completed the examination-in-chief of Witness Jean Baptiste Byilingiro in open session.
- e Mr. Rashid objected to the line of questioning adopted by the Defence, noting that the areas being covered were not contained in the will-say statements provided by the Defence. He noted that the Defence should not be allowed to lead evidence along those lines.
- f Ms. Dimitri responded that the will-say statements disclosed to the Prosecution outlined the areas in which will be covered by the testimony and there was thus no element of surprise in the line of questioning. (Please see the Chamber's decision at paragraph 2 (b) below).
- g After the Defence completed its examination-in-chief, Mr. Rashid conducted the cross-examination of Mr. Byilingiro in open session.
- h Mr. Rashid requested that the Chamber admit two sets of materials contained in Mr. Byilingiro's immigration file that the Prosecution used to confront him, noting that the documents have probative value under Rule 89 (C) as these meet the threshold for admissibility and have sufficient indicia of reliability.
- i Ms. Dimitri responded that the documents were neither authored nor signed by the witness. She argued that the documents were mere interview notes taken by the Belgian authorities and as a result they have little probative value. She argued that admitting the documents would prejudice the Defence. (Please see the Chamber's ruling at paragraph 2 (c) below).
- j Ms. Dimitri re-examined Mr. Byilingiro in open session.
- k Ms. Dimitri informed that Chamber that following the disclosure received from the Prosecution yesterday and in consultation with the Accused, the Defence has decided to drop DWAN-134 from its list of witnesses and to reserve the right to substitute another witness. She prayed that the Defence be allowed to do so.
- l Mr. Rashid opposed the application, noting that the fact that the witness has immigration records which contradict what he said in his will-say statement does not mean the Defence should drop him from its list. He noted that the Tribunal incurred significant expense in transporting the witness to Arusha to testify. He requested that the Defence provide reasons as to why the witness should be dropped to enable the Chamber take an informed decision. (Please see the Chamber's ruling at paragraph 2 (e) below).
- m The Chamber rendered its decision on the Prosecutor's oral motion to admit two will-say statements of Witness Jean Damascene Kayitana, formerly Witness DWAN 79. (Please see the Chamber's decision at paragraph 2 (f) below).
- n The Chamber noted that three Defence witnesses remain to be heard.

- o The Chamber noted that due to scheduling issues and the involvement of the Judges in other cases, the trial will resume on 30 January 2012 and will potentially extend up to a period of six weeks ending 9 March 2012, depending on any contingencies. The Chamber also announced that any site visit would likely be held from 12 to 15 March 2012. The Chamber further announced the tentative date for the filing of Closing Briefs will be 5 April 2012, and Closing Arguments are tentatively scheduled on 2 and 3 May 2012. Judgement delivery is planned for June 2012. The Chamber noted further that should the need arise for amendments to be made to the programme, a Scheduling Order will be issued.
- p The proceedings were adjourned until Monday, 30 January 2012, at 9.00 a.m.

2. Decisions & Orders rendered orally / *Décisions & Ordonnances rendues oralement*

- a. The Chamber granted the Defence application and admitted the coloured copy of the photograph into evidence, after having ascertained that the coloured copy was a faithful reproduction of the original photograph.
- b. The Chamber ruled that the Defence should restrict its line of questioning to the content of the two will-say statements disclosed to the Prosecution.
- c. The Chamber ruled that the areas which were put to the witness in relation to specific dates form part of the witness's immigration documents, will be admitted into evidence.
- d. The Chamber directed that only the relevant pages of Exhibit P 64 be translated into the other working language of the Tribunal.
- e. The Chamber granted the Defence application to drop Witness DWAN-134. The Chamber, however, underscored the need to make thorough preparations before deciding which witness to call. The Chamber reminded the Defence that it must seek the Chamber's leave to make any addition to its witness list.
- f. The Chamber denied the Prosecutor's application for the admission of the will-say statements of Witness Jean Damascene Kayitana for the purpose of discrediting the Defence case as a whole.

3. Exhibits admitted

- a. D 168 – The coloured copy of a photograph
- b. D 169 – The Personal Information Sheet of Witness Jean Baptiste Byilingiro.
- c. P 63 (a) – A copy of the French version of a statement Witness Jean Baptiste Byilingiro gave to the Belgian authorities.
- d. P 63 (b) – A copy of the English version of a statement Witness Jean Baptiste Byilingiro gave to the Belgian authorities.
- e. P 64 – Portions of interview notes (pages K 0480568 – K 0480569 and K 0481014 – K 0481027) prepared by the Belgian authorities relating to the immigration application of Witness Jean Baptiste Byilingiro.

4. Witnesses heard / *Témoins auditionnés*

Jean Baptiste Byilingiro, formerly Witness DWAN-53 (DW31)

Opening <i>Ouverture</i>	Adjournment <i>Suspension</i>
09:06 a.m.	11:05 a.m.
11:35 a.m.	1:15 p.m.
3:05 a.m.	4:44 p.m.
5:23 p.m.	5:45 p.m.
Total time in Court	
5 hrs 40 min	

Signature

Signed

For Judge W. H. Sekule
Presiding Judge

Paula Silfverstolpe
Legal Officer,
Chambers

Signature

Signed

Constant Hometowu,
Legal Officer,
CMS

Date: 26 October 2011

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