



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: RWAMAKUBA'
Case No: ICTR-98-44C-T
Chamber: Three

Before / Devant: Judge Dennis Byron (Presiding), Judge Karin Hokborg, Judge Gberdao G. Kam.

Specificities / Spécificités: Single Case.

Prosecution / Poursuite: Dior Fall, Adama Niane (*Absent*), Ian Morley (*Absent*), Tamara Cummings-John.

Accused / Accusés: Andre Rwamakuba (*Absent*).

Defence / La Défense: David Hooper, Andreas O'Shea, Svetlana Pouplard (Ass.).

Registry / Greffe: Constant K. Hometowu, Issa Mjui (Ass.).

Date: Tuesday 6 September 2005.

TRIAL DAY 36

1. Remarks / Remarques

- a. Defence Counsel (Mr. Hooper) continued and completed the cross-examination of witness RJ (PW 18) in open session.
- b. Prosecution Counsel (Ms. Fall) re-examined witness RJ (PW 18) in open session.
- c. Prosecution Counsel (Ms. Fall) made an oral application, requesting the Chamber to postpone the closing of the Prosecution case so as to enable the later to bring witnesses AWZ and ALX, who are considered to be important Prosecution witnesses to give testimony. She informed the Chamber that the witnesses have refused to come and give testimony due to security concerns, following an alleged breach of the Chamber's witness protection orders by a Defence investigator. She said the Prosecution is in contact with them and doing its best efforts to ensure that they come and give testimony.
- d. Defence Counsel (Mr. Hooper) responded that the Defence is concerned about the delay in the proceedings and underscored the importance of the accused's right to a speedy trial. He said the case was originally scheduled to end on or shortly after the 15 July 2005. He observed that the Prosecutor did not take sufficient action to bring those witnesses at trial until yesterday even though it has been on notice of the unwillingness of the two witnesses to not come to Arusha since two months. He submitted that having read the statements of the said witnesses, the nature of their evidence is secondary or tertiary in relation to the nature of the application. He expressed his concern that uncertainty would be introduced into the case, at this stage, if postponement of the closing of the Prosecution case is allowed. He noted that calling of late evidence, according to the rules, can only be dictated by the existence of exceptional circumstances, and it should only be by way of rebuttal. He said his other concern is the need to have sufficient time to prepare the Defence case and meeting all the parameters of the Defence case. He hinted that the Defence will submit a motion pursuant to Rule 98*bis* of the Rules of Procedure and Evidence due to the perceived extent of the unreliability of the declarations of all the Prosecution witnesses. He submitted that there are no exceptional circumstances warranting the delay.
- e. The Chamber noted that the earlier they are called the better, and that it will be most inappropriate to call the witnesses close to the date set for the commencement of the Defence case. The Chamber considered that at this stage is not necessary for the Defence to make its submission regarding the issue of the alleged violation of the witnesses protection by a Defence investigator and noted that it is a matter for which exact and ample evidence should be produced by the Prosecution.
- f. Prosecution Counsel (Ms. Fall) responded that the said witnesses are on the Prosecutor's witness list, since the beginning of the case and they did not come due to security concerns that would have been caused by the Defence's attitude. She stated that within 15 days OTP will be able to bring the witnesses to Arusha. (Please see the decision of the Chamber at paragraph 2 (a) below).
- g. Defence Counsel (Mr. Hooper) said the Defence's Counsels could not be present in Arusha in two weeks. He explained that the Defence has missions in several countries, has to undergo witness selection and witness confirmation exercises to be conducted in various countries. He added that Witness and Victims Support Section requires 90 days' advanced notice to be able to bring witnesses to Arusha. He sought clarification from the Chamber, noting that the Prosecution case was initially scheduled to end in July 2005, but for reasons known to the Court, continued till early September 2005. (Please see the decision of the Chamber at paragraph 2 (b) below).
- h. Defence Counsel (Mr. Hooper) proposed to tender into evidence as exhibit a Statement of Prosecution Witness XV taken by a Defence Investigator.

- i. Prosecution Counsel (Ms. Fall) objected, arguing that the purported statement was obtained by the defence Investigator, in violation of witness protection orders of the court.
- j. The Chamber said it will render a decision on the matter shortly.
- k. The Parties requested the Chamber to make an order for an official translation of Exhibits D139 and D 140 (Please see the Chamber's order at paragraph 2 (c) below)
- l. The proceedings were adjourned to tomorrow, Wednesday, 7 September 2005 at 3:00 pm

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

- (a) With respect to the adjournment of the case until Witnesses AWZ and ALX could testify at the Tribunal, the Chamber emphasized that its major concern is the fairness of the proceedings. The Chamber postponed its decision until it has more information from the OTP on the availability of the witnesses to testify. It advised the OTP to contact the relevant persons and provide it with information on resumption of the trial tomorrow afternoon.
- (b) The Chamber observed that in the light of the Prosecution oral motion to bring the two witnesses, ALX and AWZ, it is premature to discuss the issue of scheduling the Defence case until a decision regarding the postponement of the closing of the Prosecution case is taken by the Chamber. The Presiding Judge also noted that, after a decision is rendered on the Prosecution motion, the Chamber will organise an informal meeting or a Status Conference with the Parties to discuss scheduling matters.
- (c) The Chamber ordered the Registry to take measures for the official translation of Exhibits D 125, D 126, D 139 and D 140

3. Witnesses heard / *Témoins auditionnés*

- Witness RJ (PW 18)

4. Exhibits tendered / *Pièces à conviction présentées*

- Exh. D 113 A – Statement of witness XV as of 25 November 1997 (English) (*To be kept under seal*)
- Exh. D 113 B – Statement of witness XV as of 25 November 1997 (French) (*To be kept under seal*)
- Exh. D 114 A – Statement of witness XV as of 7 December 2000 (English) (*To be kept under seal*)
- Exh. D 114 B – Statement of witness XV as of 7 December 2000 (French) (*To be kept under seal*)
- Exh. D 115 A – Statement of witness XV as of 22 Feb 2001 (English) (*To be kept under seal*)
- Exh. D 115 B – Statement of witness XV as of 22 February 2001 (French) (*To be kept under seal*)
- Exh. D 116 A – Statement of witness XV as of 19 April 2001 (English) (*To be kept under seal*)
- Exh. D 116 B – Statement of witness XV as of 19 April 2001 (French) (*To be kept under seal*)
- Exh. D 117 A – Statement of witness XV as of 5 June 2001 (English) (*To be kept under seal*)
- Exh. D 117 B – Statement of witness XV as of 5 June 2001 (French) (*To be kept under seal*)
- Exh. D 118 A – Statement of witness XV as of 28 June 2001 (English) (*To be kept under seal*)
- Exh. D 118 B – Statement of witness XV as of 28 June 2001 (French) (*To be kept under seal*)
- Exh. D 119 A – Statement of witness XV as of 5 December 2001 (English) (*To be kept under seal*)
- Exh. D 119 B – Statement of witness XV as of 5 December 2001 (French) (*To be kept under seal*)
- Exh. D 120 A – Confirmation paper of witness XV as of 8 July 2003 (English) (*To be kept under seal*)
- Exh. D 120 B – Confirmation paper of witness XV as of 8 July 2003 (French) (*To be kept under seal*)
- Exh. D 121 A – Will Say Statement of witness XV as of 26 August 2005 (English) (*To be kept under seal*)
- Exh. D 121 B – Will Say Statement of witness XV as of 26 August 2005 (French) (*To be kept under seal*)
- Exh. D 123 – Tick List referred to in cross-examination of witness XV (Unmarked) (*To be kept under seal*)
- Exh. D 122 – CD Rom of witness XV's testimony in Muvunyi case of May 2005 (*To be kept under seal*)
- Exh. D 124 – Sketch of Butare University Hospital, marked by witness DH and used for cross-examination of witness XV (*To be kept under seal*)
- Exh. D 125 A – Procès Verbale of witness XV in Gatera's case of 14 April 1997 (Kinyarwanda) (*To be kept under seal*)
- Exh. D 125 B – Procès Verbale of witness XV in Gatera's case of 14 April 1997 (French) (*To be kept under seal*)
- Exh. D 126 A – Procès Verbale of witness XV in Gatera's case of 17 July 1997 (Kinyarwanda) (*To be kept under seal*)
- Exh. D 126 B – Procès Verbale of witness XV in Gatera's case of 17 July 1997 (French) (*To be kept under seal*)
- Exh. D 127 A – Procès Verbale of witness XV in Twagirayezu case of 6 May 1999 (Kinyarwanda) (*To be kept under seal*)
- Exh. D 127 B – Procès Verbale of witness XV in Twagirayezu case of 6 May 1999 (French) (*To be kept under seal*)
- Exh. D 127 C – Procès Verbale of witness XV in Twagirayezu case of 6 May 1999 (English) (*To be kept under seal*)

- Exh. D 128 – Photo XV - 1
 Exh. D 129 – Photo XV - 2
 Exh. D 130 – Photo XV - 3
 Exh. D 131 – Hand-written sketch of block 11 c marked by witness XV to show the room where he was
 Exh. D 132 A – Statement of witness RJ as of 11 September 1997 (French) *(To be kept under seal)*
 Exh. D 132 B – Statement of witness RJ as of 11 September 1997 (English) *(To be kept under seal)*
 Exh. D 133 A – Statement of witness RJ as of 22 April 1999 (English) *(To be kept under seal)*
 Exh. D 133 B – Statement of witness RJ as of 22 April 1999 (French) *(To be kept under seal)*
 Exh. D 134 A – Statement of witness RJ as of 30 March 2000 (English) *(To be kept under seal)*
 Exh. D 134 B – Statement of witness RJ as of 30 March 2000 (French) *(To be kept under seal)*
 Exh. D 135 A – Statement of witness RJ as of 27 July 2000 (English) *(To be kept under seal)*
 Exh. D 135 B – Statement of witness RJ as of 27 July 2000 (French) *(To be kept under seal)*
 Exh. D 136 A – Statement of witness RJ as of 28 June 2001 (English) *(To be kept under seal)*
 Exh. D 136 B – Statement of witness RJ as of 28 June 2001 (French) *(To be kept under seal)*
 Exh. D 137 A – Procès Verbale of witness RJ in the Gatera case of 30 April 1997 (Kinyarwanda) *(To be kept under seal)*
 Exh. D 137 B – Procès Verbale of witness RJ in the Gatera case of 30 April 1997 (French) *(To be kept under seal)*
 Exh. D 137 C – Procès Verbale of witness RJ in the Gatera case of 30 April 1997 (English) *(To be kept under seal)*
 Exh. D 138 A – Procès Verbale of witness RJ in the Twagirayezu case of 6 May 1999 (Kinyarwanda) *(To be kept under seal)*
 Exh. D 138 B – Procès Verbale of witness RJ in the Twagirayezu case of 6 May 1999 (French) *(To be kept under seal)*
 Exh. D 138 C – Procès Verbale of witness RJ in the Twagirayezu case of 6 May 1999 (English) *(To be kept under seal)*
 Exh. D 139 A – Procès Verbale of witness RJ in the Kageruka case of 11 June 1998 (Kinyarwanda) *(To be kept under seal)*
 Exh. D 139 B – Procès Verbale of witness RJ in the Kageruka case of 6 May 1999 (French) *(To be kept under seal)*
 Exh. D 139 C - Procès Verbale of witness RJ in the Kageruka case of 6 May 1999 (English) *(To be kept under seal)*
 Exh. D 140 – Excerpts of African Rights report on Muvunyi case (English), referring to RJ's interview *(To be kept under seal)*
 Exh. D 141 A – Judgement in Twagirayezu case of 14 June 2001 (Kinyarwanda)
 Exh. D 141 B – Judgement in Twagirayezu case of 14 June 2001 (English translation)
 Exh. D 142 – Photo of Rekeraho shown to witness RJ
 Exh. D 143 – Photo of a man with glasses, (priest) shown to witness RJ.
 Exh. D 144 – Tick List of witness RJ (unmarked) *(To be kept under seal)*
 Exh. D 145 A – Procès Verbale of witness RJ in the Misago case of 21 April 1999 (Kinyarwanda) *(To be kept under seal)*
 Exh. D 145 B – Procès Verbale of witness RJ in the Misago case of 21 April 1999 (French) *(To be kept under seal)*
 Exh. D 145 C – Procès Verbale of witness RJ in the Misago case of 21 April 1999 (English) *(To be kept under seal)*
 Exh. D 146 A – CD-Rom of transcripts of witness RJ's testimony in the previous trial (December 2003)
 Exh. D 147 – Photo of Rekeraho shown to witness GIO
 Exh. D 148 – Photo of Rekeraho shown to witness XV
 Exh. D 149 – Photo of Rekeraho shown to witness ALW
 Exh. D 150 – Photo of a man with glasses, (priest) shown to witness XV.

Opening <i>Ouverture</i>	Adjournment <i>Suspension</i>
9:08 a. m.	10:32 a. m.
10:56 a. m.	1:20 p.m.
3:48 p. m.	5:00 p. m.
Total time in Court	5 hrs 0 mins

signature	signature
SIGNED	SIGNED
Catherine Denis, Judgement Coordinator.	Constant K. Hometownu Legal Officer
For Judge Denis Byron Presiding Judge	
Date: 6 September 2005	Date: 6 September 2005