

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-05-82-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
DOMINIQUE NTAWUKULILYAYO

MONDAY, 23 NOVEMBER 2009
0950H
CONTINUED TRIAL

Before the Judges:

Khalida Rachid Khan, Presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

For the Registry:

Ms. Félicité A. Talon
Ms. Zulphur Mhina

For the Prosecution:

Mr. Charles Adeogun-Phillips
Mr. Ibukunolu Alao Babajide
Ms. Thembile Segoe

For the Accused Dominique Ntawukulilyayo:

Mr. Maroufa Diabira
Ms. Dorothée Le Fraper du Hellen

Court Reporters:

Ms. Deborah Gentile

PROCEEDINGS

1

2 MADAM PRESIDENT:

3 Good morning to all. The Court is in session.

4

5 May we have the appearances for the parties.

6 MR. BABAJIDE:

7 Good morning, Madam President, Honourable Judges. The appearance for the Prosecutor remains the
8 same.

9 MADAM PRESIDENT:

10 The Defence.

11 MR. EDWARDS:

12 Good morning, Madam President. Good morning, Your Honours. The Defence team remains the
13 same. Mr. Ntawukulilyayo is represented by Mr. Maroufa Diabira; by Dorothee Le Fraper du Hellen,
14 co-counsel; by Chloé Gaden, legal assistant; and myself, legal assistant. And we are also assisted by
15 Philippe Bimenyimana, investigator.

16

17 Thank you.

18 MADAM PRESIDENT:

19 Thank you.

20

21 We don't see any witness in the box.

22

23 Mr. Diabira, who is your next witness?

24 MR. DIABIRA:

25 Yes. Good morning, Madam President, Your Honours. Good morning, all.

26

27 During our last session a ruling was made to the effect that this morning in the absence of our
28 witnesses, especially Witness EAD and the expert witness, Dominique Ntawukulilyayo, the Accused,
29 would have to testify.

30

31 But before that and with the leave of the Chamber, I would like to make an oral motion based on a letter
32 which the Accused sent to you in support of -- a letter sent to you by the Accused.

33

34 Madam President, Your Honours, you may recall that during the status conference of

35 17 September 2009 –

36 JUDGE MUTHOGA:

37 Mr. Diabira.

1 MR. DIABIRA:

2 The Chamber.

3 JUDGE MUTHOGA:

4 Mr. Diabira, what is this letter sent to us by the Accused? Do you have a copy?

5 MR. DIABIRA:

6 Yes, indeed. I'm going to be dealing with it, but it is in this -- in French, Your Honours. And I felt that if
7 madam the registrar could be -- help me, I should be in a position to give -- provide copies to the
8 Bench.

9

10 Madam Registrar.

11 MADAM PRESIDENT:

12 The letter is in French. Can you read it onto the record?

13 JUDGE MUTHOGA:

14 Translation.

15 MADAM PRESIDENT:

16 Yeah, please. You read it onto the record, and we get the translation from the translation booth.

17 THE ENGLISH INTERPRETER:

18 Madam President, it would be also useful if we had -- the interpretation booth had copies of the letter.

19 MR. DIABIRA:

20 So I was saying, Madam President, that during the status conference -- during the status conference
21 you had, indeed, ordered --

22 JUDGE MUTHOGA:

23 Let's hear the letter first so that we know what you are saying -- what the Accused is saying.

24 MADAM PRESIDENT:

25 Mr. Diabira, we -- we need to understand the content of the letter first.

26 MR. DIABIRA:

27 "Arusha. 20 November 2009. Dominique Ntawukulilyayo, UNDF.

28 Distinguished Judge Khalida Rachid Khan, Presiding, Honourable Judge Lee Gacuiga Muthoga,
29 Honourable Judge Aydin Sefa Akay.

30

31 "Madam President, Your Honours, the ruling made yesterday, 19th November 2009, by
32 Trial Chamber III, regarding my testimony on Monday, the 23rd of November 2009 in the event where
33 the proposed experts by my counsel do not appear, a source of concern for me for the following
34 reasons:

35

36 "Since my initial appearance on 10 June 2008, the essential documents in connection with my trial are
37 written in English, whereas the two languages used by the ICTR, I speak only French. This difficulty

1 was raised during the status conference of 10th September 2009 by my counsel, session of
2 Thursday, 10th September 2009, transcript page 10, line 10 to 33 in the French.

3
4 "So the Chamber decided and ordered that essential documents should be translated into French; that
5 failing that, the Accused would not have had access to an equitable trial if they do not have a full
6 understanding of what is said in the documents. Yes, up to this point, when I'm writing,
7 29th -- 20th November, no document has been sent to me.

8
9 "Madam President, Honourable Judges, I wish respectfully to ask the Chamber to give me the time prior
10 to my testimony -- sufficient time, enough time, for me to read the documents as soon as they have
11 been presented to me.

12
13 "Thank you in advance, Madam President. Yours sincerely, the Accused, Dominique Ntawukulilyayo."
14

15 Let me just place this letter in context. Up to 5 p.m. yesterday my Chamber and myself continued to
16 work with Mr. Dominique Ntawukulilyayo. And, indeed, I would like to seize the opportunity to thank
17 Commander Guindo and their staff for their availability. But during the last session, Madam President,
18 Your Honours, noting this lack of preparation, my Accused told me that, "Counsel, you are going to lead
19 me to death." I was surprised, and I spent the sleepless night. And I would like to share this with you:
20 The simple reason that as a lawyer, unfortunately, in my life I have had to lead an Accused who
21 definitely did not deserve death, to death. I led them to death.

22
23 So, clearly, what Dominique Ntawukulilyayo is trying to tell you and tell me is that it is crucial that he
24 should be in the position to be tried in all fairness. Dominique Ntawukulilyayo wants to testify, but he
25 wants to testify in full, Your Honours.

26 MADAM PRESIDENT:

27 Let us not waste the Court's time any further. Your client is saying that he could not take the stand
28 because certain documents have not been translated into French -- English documents have not been
29 translated into French. Can you please identify the documents that are impeding your client to take the
30 stand?

31 MR. DIABIRA:

32 Madam President, I sent a number of correspondences to the registry to ensure that important
33 documents are translated. I have a copy of the mail that I sent, and the last one was a reminder of the
34 28th of October 2009. I have that list at your disposal.

35
36 If I have assistance from the registry –
37

1 MADAM PRESIDENT:

2 Can you say it into the mike, Mr. Diabira?

3 MR. DIABIRA:

4 Absolutely. Just in case you do not have enough copies, I have more.

5

6 With the blessing of the Chamber, I am ready to repeat the list of those documents.

7 MADAM PRESIDENT:

8 Yes, please.

9 MR. DIABIRA:

10 Yes, with your authorisation, Madam President, I am going to ask my assistant, who is

11 English-speaking to do so.

12 MR. EDWARDS:

13 All right. Your Honours, the first document is the: "Decision on the Defence Motion for Leave to Vary

14 its Witness List to Add Three Witnesses and Extend Protective Measures; and the Chamber's Further

15 Order to Reduce the Defence Witness List of 30th September 2009."

16 THE ENGLISH INTERPRETER:

17 Madam President, from the booth, could counsel please read slowly. The interpreters do not even have

18 a copy of that document.

19 MADAM PRESIDENT:

20 Before you proceed, may I know, these are the documents which the Accused, himself, needs to read;

21 am I right?

22 MR. EDWARDS:

23 That's right. Yes.

24

25 Your Honour, we have them in English, but the French translations haven't been received.

26 MADAM PRESIDENT:

27 And these -- the following list of documents, which -- the list of which -- the documents which you are

28 going to read are the documents which the Accused wanted to read and understand them.

29 MR. EDWARDS:

30 Exactly.

31 MADAM PRESIDENT:

32 Okay. Go ahead then.

33 MR. EDWARDS:

34 The second document is the: "Decision on the Defence Motion to Admit the Statement and Report of

35 Mr. Vincent Chauchard", dated 29th September 2009.

36

37 Thirdly, the "Decision on the Defence Motion for Certification to Appeal the Chamber's Decision of

1 31st July 2009." That is a decision dated 14th of August 2009.

2
3 I'm being told to slow down, Your Honour.

4
5 The next document is Prosecution's Response to: "*Requête en urgence de la Défense aux fins de*
6 *report des délais fixés pour le dépôt du mémoire préalable au procès de la Défense et le début de la*
7 *présentation de la preuve de la Défense*", dated 27th of July 2009.

8 MADAM PRESIDENT:

9 We didn't get the translation of this last --

10 MR. EDWARDS:

11 I'll repeat that then, Your Honour. I'll repeat it.

12
13 The Prosecution's Response to: "Urgent motion of the Defence to extend the deadline given for the
14 filing of the Defence pre-trial brief. And the beginning of the Defence case", dated 27 July 2009.

15
16 Your Honour, the next document is: "A statement of Contested Matters of Facts and Law", dated
17 27th of April 2009.

18
19 The next document is: "Compliance with Further Orders to the Parties Concerning Commencement of
20 Trial: Prosecution's Request to Admit Facts not in Dispute", dated 23rd April 2009.

21
22 The penultimate document is the: "Decision in Preliminary Motion Alleging Defects in the
23 Indictments -- Indictment" -- sorry, dated 28th April 2009.

24
25 And, finally: "Order Extending Time for Parties to Comply with Chamber's Order of 1st April 2009 and
26 Further Order to Prosecution Regarding Transfer of Detained Witnesses", dated 22nd of April 2009.

27 MADAM PRESIDENT:

28 Okay. Go on.

29
30 Go on, Mr. Diabira.

31 MR. DIABIRA:

32 I'm grateful, Madam President.

33
34 My assistant is reminding me that there is another decision that is not mentioned in this list. I do not
35 know if it actually appears. But what I would like to point out, Madam President, Your Honours, is that I
36 got into this case at the end of March. The first correspondence that Dominique Ntawukulilyayo sent to
37 me was on the 2nd of April 2009. And I would simply like to point out that Dominique Ntawukulilyayo

1 told me that as far as the language in which the documents are written is concerned, documents that I
2 receive from the Chamber and from the Prosecutor, if the documents are in English, I do not have any
3 access -- or I cannot understand that language.

4
5 My right to receive documents in a language that I understand is a fundamental right. And I have said
6 that the languages I understand are only French and Kinyarwanda. And given that as from the point of
7 my initial appearance I have continued to receive documents in English, and taking into account the
8 difficulties and the serious prejudice that this might cause me, I would like, once again, to appeal to you
9 to ask the institutions concerned to understand that I am not able to follow my case.

10
11 The second answer, which I received from Mr. Dominique Ntawukulilyayo dates or bears the date of the
12 13th of September 2009. Mr. Ntawukulilyayo wrote to me and told me that the documents from the
13 Office of the Prosecutor, to which we have responded, all the Prosecution's motions, his responses to
14 the Defence motions, to decisions handed out by the Chamber regarding my case, "I would like to be
15 able to receive them in a language which I understand so that I can be able to follow my case."

16
17 The third letter or correspondence that I received was dated 10th of October 2009. "Up to date I am
18 still receiving correspondences in English from the Chamber and from the Prosecutor. And once again,
19 this causes me not to be able to regularly follow up my proceedings or the proceedings in my case."

20
21 That is why, Madam President, Your Honours, when Dominique Ntawukulilyayo told me yesterday at
22 the time we were separating, when he told me, "Counsel, I am going to death -- I am being led to
23 death," I am saying that I cannot lead Dominique Ntawukulilyayo to death. He is ready, and he cannot
24 wait to explain what he knows about this case, but he wants to do so in a context in which he has all the
25 valid or important elements of his case. And that is the reason why, Madam President, Your Honours, I
26 would like it to please the Chamber to give firm instructions that all the documents, the important
27 documents that we have listed, should be translated and placed at the disposal of
28 Dominique Ntawukulilyayo. I am saying that he is not waiving his right to be able to provide
29 explanations to the Chamber.

30
31 The next question is: When will you be ready? My preparation depends on that of my client. I am
32 ready. I am available. But Dominique Ntawukulilyayo, who is the Accused and who has to testify, is
33 not ready. So fundamentally, that would cause a prejudice -- cause a prejudice and would make it
34 impossible for him to be able to give you the basic explanations of the case before him because he
35 does not have access to documents in a language that he understands. That I would -- why I would like
36 it to please the Chamber to allow Dominique Ntawukulilyayo enough time and also that you should give
37 firm instructions to the various services of the registry so that the translation of the documents should

1 be undertaken and the documents should be placed at the disposal of my client. I thank you.

2 MADAM PRESIDENT:

3 Thank you, Mr. Diabira. Before I allow the Prosecution to respond, may I ask you that -- let me tell you
4 that out of the list of documents which you have just read out and the list you have provided to us, out
5 of those documents, six -- five are the decisions of the Chamber. Under what provision of law the
6 Accused is entitled to read the decisions himself, understand? You have a bilingual member in your
7 team, Mr. Iain. Can't those be translated to the Accused by him? Now I'm referring to the decisions,
8 order of this Chamber.

9 MR. DIABIRA:

10 Madam President, Your Honours, it goes without saying that I'm the only illiterate in my team, since I
11 just speak my own language and I manage to speak French. But the reasons why my assistants who
12 amongst them have some bilingual knowledge -- but they are here because of their legal background. I
13 am illiterate. I did not raise my problem. I am raising the problem of the Accused. The Accused is
14 supposed to refer to an official translation.

15

16 I can -- and that is what is being done. I can ask my collaborators to give me a translation -- to give me
17 translation of the document, but the client's position is: I want an official document that commits the
18 Tribunal. And that is what complicates the problem of access to documents which are authentic and
19 which are translated by the competent services of the Tribunal. That is the problem we are facing. And
20 I thank you.

21 MADAM PRESIDENT:

22 Mr. Diabira, the purpose of having a bilingual member of your team is to understand the documents and
23 to make it accessible to the other members of the team who do not speak English or French. It is to
24 limit the delays in the proceedings. And we believe and we really don't understand why these
25 documents were not translated to you by Mr. Iain -- and the Accused, who at the moment the Accused
26 is the main person who needs to understand each and every document which has been not translated
27 into French.

28 MR. DIABIRA:

29 I might perhaps not have expressed myself well enough on a Monday morning, but I would like the
30 Chamber to understand me. I have no objection. I am getting the support of my excellent collaborators
31 to understand the documents of the case. Let me finish, Madam President, please, with your leave.

32

33 The Accused is saying: "I want documents translated by the official services of the Tribunal. I have not
34 been able to have access to those documents, even though I have asked that the documents should be
35 translated into a language that I read."

36

37 That is the crux of the problem. It has nothing to do with me. As I say, my excellent assistants have

1 helped me to have access to a number of documents.

2 MADAM PRESIDENT:

3 That is what I'm saying, that Mr. Iain, who is a bilingual, has all the capacity to translate the documents
4 to the Accused. And that is the reason why you are having a bilingual member in your team, to make
5 things easy, to cut the delays, to limit the delays in the proceedings.

6

7 Anyway, I'll give the floor to the Prosecutor to respond.

8 MR. ADEOGUN-PHILLIPS:

9 Thank you, Your Honour. We concur with your finding that six of these documents are, indeed,
10 decisions --

11 MADAM PRESIDENT:

12 It's an observation. It's not a finding.

13 MR. ADEOGUN-PHILLIPS:

14 Well, observations, yes, Your Honours, that six of these documents are the decisions of the
15 Your Honours. The documents that are not decisions: A Statement of Contested Matters of Fact and
16 Law, and the other documents, some of these documents are dated, Your Honours. I mean, with the
17 passage of time, one wonders what relevance they have to the proceedings today.

18

19 In any event, as far as the Statement of Contested Matters of Fact and Law are concerned, no
20 admissions were made by my friends in this case and all matters were in issue. Prosecution has
21 opened and closed its case. The Defence is about to do the same. And I really wonder what relevance
22 that document has as matters stand today.

23

24 Your Honours, our position is that a lot of these matters are not relevant to the proceedings as they
25 stand today, having been overtaken by events -- obvious events, for that matter. And we also wonder
26 why our friends have waited until so late in the day to raise this matter and brought this matter to
27 Your Honours' attention.

28

29 Those are our observations, Your Honours.

30 MR. DIABIRA:

31 Just a word, Madam President. This issue has been brought up several times to your attention. That is
32 the first point.

33

34 Secondly, the relevance of documents depends on us. I wonder why the Prosecutor is talking about it.
35 But most of all, it is a fundamental right for the Accused person to have access to all the documents
36 regarding his proceedings, and that is what we are asking the Chamber by recalling the -- or else the
37 Accused person would not have a right to a fair trial, if he does not have access to all the documents in

1 the language he understands. That is the crux of the matter. It is not whether a document is relevant
2 or not. That should be left to our assessment. Thank you.

3 MADAM PRESIDENT:

4 We need to deliberate.

5 MR. DIABIRA:

6 Yes, just a word. A while ago you raised a question or you asked a question. I do not clearly state on
7 what basis we are raising this oral motion as far as the importance of documents, access of which have
8 to be provided to the Accused person.

9
10 I would like to recall the decision of the Karemera case, where -- this is a decision of the
11 28th of October 2005, a decision on a motion presented by Édouard Karemera to ensure that he has a
12 fair trial.

13
14 I would just like to mention item 7 of that decision. Rule -- Article, rather, Article 20 (A) of the Statutes
15 gives the accused person the right to be informed in detail and in a language which he understands the
16 nature and the charges that are brought against the accused on the basis of that provision. And in
17 accordance with the provisions of ad hoc Tribunals, the accused person's right to obtain translation in a
18 language which he understands is not limited to a number of documents, that is, the indictment, matters
19 relating to the indictment, the evidence on which the decision of the Trial Chamber is based, and the
20 charges that are included in that indictment.

21
22 The accused person has to have all the documents in the -- both languages. I am taking that as a basis
23 because today Dominique Ntawukuliyayo is telling you that, "I only speak French and Kinyarwanda." It
24 is, therefore, fair that he should be -- have access to the essential documents that are not translated
25 into Kinyarwanda but which can be translated into French. That is what I wanted to add, and I
26 thank you.

27 MADAM PRESIDENT:

28 We need to deliberate. We adjourn up until eleven. Thank you.

29 *(Court recessed from 1023H to 1145H)*

30 MADAM PRESIDENT:

31 Session resumes.

32
33 Here is the oral ruling regarding Defence submissions on the Accused not taking the stand today.

34
35 Throughout these proceedings the Chamber has accommodated the Accused's fair trial rights,
36 particularly, the right to adequate time to prepare his Defence, and has allowed ample time for
37 preparation of his testimony. The Chamber's -- the Chamber allowed over three months between close

1 of Prosecution case and the commencement of the Defence case, which was considered sufficient time
2 for preparation of this single Accused case.

3
4 The Defence was well informed in advance that in case -- that its case would commence on
5 14th September 2009. During the status conference held on 10th September, the Defence informed
6 the Chamber that it intended to file a motion for a second session as its experts would only be available
7 in the course of November 2009.

8
9 On 11th September it became necessary for the Chamber to postpone commencement of the
10 Defence case by one week, thereby necessitating a second session which was scheduled for
11 16th November. The Defence did not file a motion for any further postponement.

12
13 On 22nd October, the Defence filed a report of a proposed expert. They did not file a CV containing the
14 proposed expert's qualifications. His CV was filed on 11th November, when the Defence also filed the
15 report and the CV of another proposed expert. The Defence, therefore, failed to comply with the filing
16 obligation under Rule 94 *bis*.

17
18 On 16th November, the Defence filed its order of appearance of the witnesses for this session, which
19 included both expert witnesses and the Accused.

20
21 On 9th -- 19th November, the Prosecution filed motions to reject the expert -- the written
22 Defence expert witnesses proposed. The Chamber also rendered an oral ruling stating that the
23 Accused should be prepared to testify on 23rd November, that is, today, in the event the Defence
24 experts are unable to testify.

25
26 Today the Defence has informed the Chamber that the Accused is not ready to testify, as there are still
27 documents, including decisions and orders of the Chamber which have not been translated into a
28 language the Accused understands, that is, French.

29
30 The Chamber recalls that the Accused is entitled to translation of all documents which enable him to
31 understand the case against him, which includes decisions and orders of the Chamber. However, the
32 Chamber knows that the Tribunal's tactics of assigning Defence teams composed of bilingual counsel
33 or legal assistants in order to limit delays in the proceedings resulting from a lack of access to the
34 translations. A trial document not available in the language understood by the Accused should not
35 serve as a reason for delay, particularly when the Defence team -- legal team is able to assist the
36 Accused.

1 However, considering that, one, the issue currently before the Chamber concerns the Accused's
2 testimony; two, there are some decisions and orders which have yet to be translated; and three, in
3 order to give full regard to the rights of the Accused, the Chamber will allow the Accused additional time
4 in order to receive translation of the outstanding decisions and orders.

5
6 The Chamber orders the language section to expedite a translation of the documents identified by the
7 Defence during today's proceedings and provide these translations to the Defence by
8 30th November 2009. The Chamber orders that the Accused testify on 8th December 2009.

9
10 With respect to Defence expert witnesses, considering that, pursuant to 94 *bis*, 21 days is required
11 before filing -- between filing of full expert report and expert testimony, the Defence adjourn the
12 case -- proceedings until further order -- yeah, the Chamber adjourns the Defence case until further
13 order.

14
15 Thank you.

16 *(Court adjourned at 1155H)*

17 *(Pages 1 to 11 by Deborah Gentile)*

CERTIFICATE

I, Deborah Gentile, Official Court Reporter for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

I am further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

Deborah Gentile