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International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER I

Before: Judge Navanethem Pillay, Presiding
Judge Erik Møse
Judge Asoka de Zoysa Gunawardana

Registry: Ms. Marianne Ben Salimo

Decision date: 11 June 2001

JUDICIAL RECORDS ARCHIVES
RECEIVED

ICTR
11/06/2001

OR.: ENG
2001 JUN 11 P 3: 32

THE PROSECUTOR v. FERDINAND NAHIMANA
Case N°. ICTR-96-11-T

ORDER CONCERNING PROSECUTION WITNESS GO'S COMPLAINT
REGARDING CONTACT BY THE DEFENCE TEAM FOR FERDINAND
NAHIMANA

The Office of the Prosecutor:

Ms. Monasebian Assistant Trial Attorney
Ms. Kagwi Assistant Trial Attorney

Defence Counsel:

Mr. Biju-Duval Lead Counsel
Ms. Ellis Co-Counsel

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: AMINATI L. R. N'GUM

SIGNATURE: *Aminati L. R. N'Gum* DATE: 11/06/01

22408

SITTING as Trial Chamber I, composed of Judge Navanethem Pillay, Presiding, Judge Erik Møse and Judge Asoka de Zoysa Gunawardana;

PURSUANT to Articles 20 and 21 of the Statute and Rules 69 and 75 of the Rules of Procedure and Evidence ("the Rules");

BEING SEIZED OF an oral complaint by Prosecution Witness GO that the Defence Team for Ferdinand Nahimana tried to contact him on 27 May 2001 at a "safe house";

HAVING HEARD the parties on 28 May 2001 in Closed Session;

CONSIDERING the submission by the Defence that the Lead Counsel, Mr. Biju-Duval believed that he had seen witness GO talk to a previous witness, Mr. Kamilindi on 23 May 2001;

TAKING INTO ACCOUNT that during the cross-examination of witness GO, Mr. Biju-Duval questioned him as to whether he spoke to Mr. Kamilindi at the place where he was staying while in Arusha, and considering that the Chamber overruled questions relating to the name of the "safe house";

CONSIDERING FURTHER that Mr. Biju-Duval stated that he had sighted witness GO with another witness and convinced that the correct facts had not been placed before the Chamber, the Defence decided to make further inquiries so as to challenge the credibility of witness GO. They had proceeded to a location, identified themselves and asked the proprietress for the register, to ascertain whether someone from Rwanda or Tanzania was staying there over the past week;

NOTING the objection by the Prosecutor to the procedure adopted by the Defence to challenge the credibility of witness GO;

CONSIDERING the Prosecution submission that the Defence was in contempt of the ruling of the Chamber overruling any questions on the place of abode of witness GO whilst in Arusha and that the Defence had also violated the Witness Protection Order¹ in respect of witness GO which prohibited the divulgence of any information about witness GO by the Defence, to anyone;

TAKING INTO ACCOUNT the explanation by Mr. S. Vahidy, Chief of Witness and Victims Support Section ("WVSS") who confirmed what the Defence had stated, except to add that the proprietress had informed him that the Defence specifically inquired about a Rwandan person staying at the hotel and that she had sent a note to witness GO with the names of the Defence Counsel.

¹Order dated 8 July 1998, Oral Decision rendered on 26 June 1997.



DELIBERATIONS

- In terms of the Witness Protection Order, in the case of *The Prosecutor vs. Ferdinand Nahimana* (ICTR-96-11-T), dated 8 July 1998, the Trial Chamber ordered in paragraph 7 that:

The accused or his defense counsel shall make a written request, on reasonable notice to the Prosecution, the Trial Chamber or a Judge thereof, of its wish to contact any protected Prosecution witnesses, and the Prosecution shall undertake to facilitate such contact.

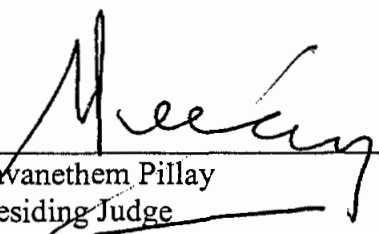
The Trial Chamber notes that the Defence did not contact or attempt to contact the protected witness. However, the Defence made investigations at a "safe house" where a protected witness was staying. They (a) entered the premises, (b) made enquiries, and (c) aroused the suspicion of the proprietress who then alerted the witness of the visit.

Witness GO expressed his alarm to the Trial Chamber. Protected witnesses are in a vulnerable position. The Trial Chamber recognizes this and has ordered protective measures to cover situations such as these. The Trial Chamber notes the explanations given by the Defence in this case: that they had not intended to contact the witness, and it accepts that no direct contact was in fact made with the witness. Therefore, the Trial Chamber finds that no violation of the Witness Protection Order occurred.


However, the Trial Chamber views the visit of the Defence to the "safe house" in the manner in which it was undertaken as inappropriate. Such visits may expose witnesses to risk, as to their safety. The Defence is advised to exercise more prudence and to follow alternative procedures available to them. In this case, they could have approached the Prosecutor, the WVSS or the Trial Chamber itself in a closed session for assistance and direction.

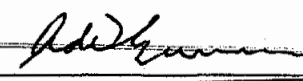
Accordingly, the Defence is hereby required not to engage in any such activity, as enumerated above, which would endanger the safety of a protected witness.

Done in Arusha, this 11th day of June 2001,


 Navanethem Pillay
 Presiding Judge




 Erik Møse
 Judge


 Asoka de Zoysa Gunawardana
 Judge