



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge William C. Matanzima Maqutu
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 29 June 2001

THE PROSECUTOR
v.
Juvénal KAJELIJELI
Case No. ICTR-98-44A-T

2001 JUN 29 P 12:34

**DECISION ON THE PROSECUTOR'S MOTION TO REINSTATE A WITNESS
ON THE LIST OF WITNESSES TO BE CALLED AT TRIAL
And
ORDER FOR THE TRANSFER OF FOUR DETAINED WITNESSES
PURSUANT TO RULE 90 BIS**

The Office of the Prosecutor:

K. Fleming
I. Ojemeni

Counsel for the Defence:

L. S. Hinds
N. M. Bompaka

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: John R. Kiyeyem

SIGNATURE: [Signature] DATE: 29.06.01

to file

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge William C. Matanzima Maqutu and Judge Arlette Ramaroson;

BEING seized of the “Prosecutor’s Motion for the transfer of detained witnesses pursuant to Rule 90*bis* and 73(A) of the Rules of Procedure and Evidence” (the “Rules”) (the “Motion”) filed on 2 April 2001;

CONSIDERING that a Letter from the Minister of Justice in Rwanda dated 21 June 2001 was filed by the Prosecutor in support of her Motion on 26 June 2001;

BEING FURTHER SEIZED of the “Prosecutor’s Motion to Reinstate a Witness on the List of Witnesses to be Called at the Trial of the Accused Pursuant to Rule 73*bis* (E) of the Rules of Procedure and Evidence” (the “Motion to Reinstate”), filed on 19 June 2001;

NOW CONSIDERS pursuant to Rule 73 of the Rules the instant Motions on the basis of the written briefs only, as filed by the Parties;

WHEREAS Rule 73 (D) of the Rules states that “A responding party shall, thereafter, file any reply within five days from the date on which Counsel received the motion”, the Chamber notes that to date, the Defence for Kajelijeli did not reply to either of the Motions;

SUBMISSIONS OF THE PARTIES

1. The Motion requests an order pursuant to Rule 90*bis* of the Rules for the temporary transfer of four detained witnesses under the pseudonyms GDD, GAO, GDQ and GAP from the Ruhengeri Prison in Rwanda to the United Nations Detention Facility (UNDF) in Arusha from “Friday 22 June 2001 until such time as the Chamber is satisfied that their presence is no longer required”. According to the Prosecutor, the said witnesses were to testify during the first two weeks of the trial of the Accused starting from 2 July 2001 and the Prosecutor undertook to file the requested letter from the Minister of Justice of the Republic of Rwanda concerning these detained witnesses as soon as she had received it.

2. Summaries of the expected testimonies of three of these witnesses, namely GDD, GAO and GAP have been submitted by the Prosecutor in the list of witnesses provided in the pre-trial brief filed on 5 February 2001. The Chamber notes however that GDQ was not included on the said list;

3. The Prosecutor has filed a Motion to Reinstate Witness GDQ, pursuant to Rule 73 *bis* (E), requesting leave from the Chamber to reinstate her Witness List. The Prosecutor moves so that Witness GDQ who was “inadvertently omitted from the list of

witnesses the Prosecutor intends to call at Trial” from the Witness List appended to the pre-Trial Brief, be reinstated in the interests of justice. The Prosecutor submits that the unredacted statements of Witness GDQ were disclosed to the Defence by a letter dated 19 February 2001 so as to comply with the time limits within which disclosure should be achieved and that, by the same letter, the Prosecutor informed the Defence of her intention to call four detained witnesses to testify at trial, including Witness GDQ.

4. The Prosecutor filed on 26 June 2001 a letter dated 21 June 2001 from the Minister of Justice of the Republic of Rwanda to the Deputy Prosecutor of the Tribunal, confirming that these four (4) detained witnesses are at the disposal of the Tribunal at any time to testify in the trial of Juvénal Kajelijeli and that their transfer would not extend their detention period.

DELIBERATIONS

5. The Chamber will first review the Prosecutor’s Motion to reinstate her witness list by adding Witness GDQ. The Chamber recalls that the final list of witnesses to be called at Trial is the list filed by the Prosecutor with the pre-trial brief on 5 February 2001. The Chamber emphasises that Rule 73bis (E) of the Rules was amended on 30-31 May 2001 and reads as follow: “After commencement of Trial, the Prosecutor, if he considers it to be in the interest of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.”

6. Pertaining to Witness GDQ, the Chamber notes that the Prosecutor acknowledges that the latter was inadvertently omitted from the Witness List filed on 5 February 2001 whereas unredacted statements of the said witness were disclosed to the Defence on 19 February 2001. The Chamber accepts that the Prosecutor has fulfilled in good faith her disclosure obligation and that, the later being completed, the Defence should not be prejudiced by adding Witness GDQ to the Witness List as the unredacted witness’ statement pertaining to Witness GDQ was disclosed in compliance with Rule 66(A)(ii). Having granted leave to add Witness GDQ to the Witness List, the Chamber will subsequently review the Prosecutor’s request for an order for the transfer of that witness.

7. Rule 90bis(B) of the Rules requires that a transfer order shall be issued only after prior verification that the following conditions are met:

“(i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;

(ii) the transfer of the witness does not extend the period of his detention as foreseen by the requested State”.

8. On the basis of the official documentation from Rwandan authorities provided by the Prosecutor concerning the four detained witnesses she intends to call to testify in the trial of Juvenal Kajelijeli, the Chamber is satisfied that the conditions have been met in the present case to order the temporary transfer of four detained witnesses with the pseudonyms GDD, GAP, GAO and GDQ from the time when they are due to testify at trial and for a period not exceeding two months (See "Decision on the Prosecutor's Motion for the Transfer of Detained Witnesses pursuant to Rule 90bis", of 23 August 2000 in the *Prosecutor v. Bagambiki et al. And Ntagerura*, Case No. ICTR-99-46-I).

9. The Chamber notes that by a Memorandum to the Trial Chamber dated 26 June 2001, the Prosecutor maintained in relation to the Trial proceedings starting on 2 July 2001 that "if the four detained witnesses [...] are transferred to the UN detention Unit within this period of the trial", she would seek leave from the Chamber to modify the Witness List so as to call these witnesses to testify during the said period. Nonetheless, as the conditions set by Rule 90bis of the Rules were only satisfied on 26 June 2001 and, mindful of the practical arrangements necessary for the organisation of the transfer of detained witnesses, the Chamber requests from the Prosecutor in co-operation with the Registry, that it be informed in advance of the dates at which these detained witnesses could practically come to testify at trial. From this date of transfer, the Chamber decides that the detained witnesses should remain at the UNDF for a period not exceeding two months.

FOR THE ABOVE REASONS, THE TRIBUNAL,

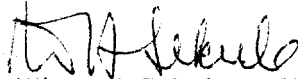
GRANTS the Prosecutor's Motion to add Witness GDQ to her Witness List;

GRANTS the Prosecutor's Motion to order the transfer of detained witnesses ;

- I. **ORDERS**, pursuant to Rule 90bis of the Rules, that the four detained witnesses with the pseudonyms GDD, GAO, GDQ and GAP shall be transferred temporarily to the Tribunal's Detention Facilities in Arusha from the time when they are due to testify at trial, at a date which has to be subsequently specified by the Prosecutor, and for a period not exceeding two months from the date of the transfer;
- II. **REQUESTS** the Government of Rwanda to comply with this order and to arrange for the transfer in liaison with the Registrar and the Tanzanian Government;
- III. **INSTRUCTS** the Registrar to:
 - A.- transmit this order to the Governments of Rwanda and Tanzania;
 - B.- ensure the proper conduct of the transfer, including the supervision of the witnesses in the UNDF; and to
 - C.- remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the

length of the temporary detention and, with the shortest delay, inform the Trial Chamber of any such change.

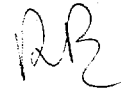
Arusha, 29 June 2001



William H. Sekule,
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

[Seal of the tribunal]

