



ICTR-98-44A-T
11-4-2002
(1690 - 1587)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1690
Matanzima

OR: ENG

TRIAL CHAMBER II

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

WCM

Registrar: Adama Dieng

Date: 11 April 2002

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ICTR
SECRET

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

DECISION ON THE DEFENCE MOTION FOR VERIFICATION OF THE
AUTHENTICITY OF EVIDENCE OBTAINED OUT OF COURT (RULE 89(D))

The Office of the Prosecutor:

Marks Moore
Ifeoma Ojemeni
Ibukunolu Babajide
Dorothee Marotine

Counsel for Kajelijeli:

Lennox Hinds
Nkeyi Makanyi Bompaka

WCM

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

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

BEING SEIZED of a "*Requête en extrême urgence de la défense aux fins de vérification de l'authenticité de tout élément de preuve obtenu hors audience*"¹ filed on 29 November 2002 (the "Motion");

CONSIDERING

- (i) The "Prosecutor's Response to Defence Motion for Verification and Authenticity of All Evidence Obtained Out of Court" filed on 18 December 2002 (the "Prosecutor's response") and;
- (ii) The "Defence's Rebuttal to the Prosecutor's Response to the Defence's Motion for Verification of All Evidence Obtained Out of Court" filed on 7 January 2002 (the "Defence's rebuttal")

NOTING the Chamber's "Decision on Juvénal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO" of 2 November 2001 (the "Decision on the Recalling of Prosecution Witness GAO");

CONSIDERING the Statute of the Tribunal (the "Statute"), and the Rules of Procedure and Evidence (the "Rules"), particularly Rule 89(D);

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

SUBMISSIONS OF THE PARTIES

1. The Defence submit that Witness GAO, a witness recalled before the Chamber specifically to allow cross-examination on alleged discrepancies between his statements before the Rwandan Authorities and his testimony before the Tribunal, has, in the first instance, come before the Tribunal and identified his fingerprints on statements initially marked as Defence Exhibits 8A, 8B, 8C, 8D, 8E, and 8F. Witness GAO subsequently denied that the fingerprints on Exhibits 8D, 8E and 8F were his and denied the statements contained therein.
2. The Defence request the Chamber to take measures, pursuant to its powers under Rule 89(D) of the Rules, to verify the authenticity of Defence documents 8D, 8E and 8F, notably by hearing the judicial authorities before whom the witness made his declarations and by calling a fingerprint expert to verify his fingerprints on the said statements.
3. The Defence reserve the right to recall witness GAO before the Trial Chamber.

AMS

¹ Extremely Urgent Defence Motion for Verification of the Authenticity of all Evidence Obtained Out of Court (unofficial translation)

4. The Prosecutor asserts that the case before the Tribunal is one of unlawfully obtained evidence. The Prosecutor also submits that the Defence use an irregular procedure to offer evidence to the court, and that prior to the presentation of such evidence they should have "passed the material through the prescribed authority" and that this "prescribed authority" would have "ensured the provenance of the documentation well before it is presented to the Tribunal".
5. The Defence seek to rebut this submission by asserting that the documents were obtained only after Defence Counsel made appropriate requests and applications to officials in Rwanda. They also submit that, in any case, the Prosecutor, pursuant to Rule 66 of the Rules, should have made these documents available to them.
6. Furthermore, regarding fingerprint identification, Counsel for Kajelijeli contends that Witness GAO has offered to have his fingerprints compared with those on the questioned documents and that the Chamber has the authority and the means to obtain such authentication. The originals of these documents lie with the Ministry of Justice in Rwanda.
7. The Prosecutor further submits that it is only when the court is unsatisfied with evidence before it that it should *proprio motu* request authentication of evidence. The Prosecutor maintains that, in any case, if a Party decides to apply for verification of the authenticity of evidence, it should be of the other Party's documentation and not its own.
8. The Defence submit that since the statements appear to have been signed by a Deputy Prosecutor in Rwanda they are entitled to bring such a motion in order to summon him before the Tribunal to certify the authenticity of the questioned documents. The Defence also remind the Chamber that a co-operation agreement exists between the Tribunal and the Government of Rwanda.

HAVING DELIBERATED

9. The Chamber does not accept the Prosecutor's argument that the case is one of unlawfully obtained or illegal evidence. The Chamber notes that the Prosecutor previously made an oral motion to have such evidence excluded under Rule 95. The Chamber has already ruled upon this matter on 28 November 2001².
10. The Prosecutor's arguments relating to "passing the prescribed material through the prescribed authority" have no basis in the rules.
11. The Chamber has considered the Prosecutor's alternative contention that a Party may only make an application for the verification of the other Party's evidence but the Chamber sees no reason for this restriction of the applicability of Rule 89(D).
12. Rule 89(D) states "[a] Chamber may request verification of the authenticity of evidence obtained out of court."

² See the Chamber's Oral Ruling of 28 November 2001, Transcripts of 28 November 2001 p31-34

13. The Chamber has considered the application of the Defence that the Chamber should use its discretionary power pursuant to Rule 89 (D) to request for the verification of the authenticity of evidence. The Chamber has taken note of the testimony of Witness GAO and notes in particular that the witness first identified fingerprints on the aforementioned statements as being his, but at a later stage proceeded to deny that they were his. The Chamber recalls that statements marked 8D, 8E and 8F were not admitted into evidence through Witness GAO on 28 November 2001. The Chamber further notes that within the Rules, each Party can bring the evidence it requires without invoking the Chamber's discretion.
14. Accordingly, the Chamber does not find sufficient reason in its discretion to request for the verification of the authenticity of the statements in question.

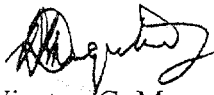
FOR THE FOREGOING REASONS, THE TRIBUNAL HEREBY

DENIES the Defence Motion

Arusha, 11 April 2002



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge



(Seal of the Tribunal)