



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44A-T  
14/6/2002  
(1753-1750)

International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

1753  
Mwami

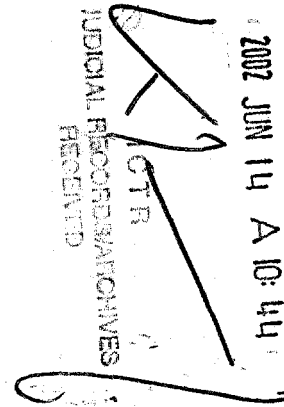
OR: ENG

**TRIAL CHAMBER II**

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

Registrar: Adama Dieng

Date: 14 June 2002



**The PROSECUTOR**

v.

**Juvénal KAJELIJELI**  
Case No. ICTR-98-44A-T

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**DECISION ON KAJELIJELI'S MOTION TO EXCLUDE STATEMENTS AND  
TESTIMONIES OF DETAINED WITNESSES**

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The Office of the Prosecutor:

Ken Fleming  
Ifeoma Ojemeni

Counsel for Kajelijeli:

Lennox Hinds  
Nkeyi Makanyi Bompaka

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

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

**BEING SEIZED** of

- i. The “*Requête en extrême urgence de la défense aux fins d’exclusion de la cause des déclarations et dépositions des témoins détenus GDD, GDQ, GAP et GAO*” filed on 18 April 2002 (the “Motion”);
- ii. The “Response of the Prosecutor to the Accused’s Motion of 17 April 2002 to Strike Out Evidence” filed on 29 April 2002 (the “Response”) and the “Prosecutor’s Addendum to Response in Respect of Motion to Strike out Evidence” filed on 30 April 2002 (the “Addendum”);
- iii. The “Defence’s Opposition to the Prosecutor’s Addendum to Response in Respect of Motion to Strike out Evidence” filed on 10 May 2002 (the “Defence Reply”);

**NOTING** the “Decision on Juvénal Kajelijeli’s Motion Requesting the Recalling of Prosecution Witness GAO” of 2 November 2001 (the “Decision to Recall a Detained Witness”).

**CONSIDERING** the Statute of the Tribunal (the “Statute”), particularly Articles 19 and 20, and the Rules of Procedure and Evidence (the “Rules”), specifically Rules 66, 67, 89 (C) and 90(G);

**NOW CONSIDERS** the matter solely on the basis of the written briefs of the Parties pursuant to Rule 73(A) of the Rules;

**SUBMISSIONS OF THE PARTIES**

The Defence’s Submissions:

1. The Defence submits that it has not yet received the statements made by detained witnesses GDD, GDQ and GAP before the Rwandan Authorities, as ordered by the Chamber in its Decision of 2 November 2001. As a result, it has not been able to complete the cross-examination of detained Prosecution witnesses GAO, GDD, GDQ and GAP.
2. According to the Defence, Articles 19 and 20 of the Statute are violated by the non-disclosure of these declarations. Furthermore, the Rwandan Prosecutor General’s refusal to provide the Prosecutor with the prior statements of the above-mentioned witnesses amounts to a violation of Article 28 of the Statute<sup>1</sup>.
3. Accordingly, the testimony of detained Prosecution witnesses GAO, GDD, GDQ and GAP should be excluded.

<sup>1</sup> Letter No. I/413/D11/Progeca (26 November 2001)



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The Prosecutor's Submissions:

4. The Prosecutor submits that the testimonies that the Defence seek to have struck from the record have already been formally admitted into evidence. Furthermore, there was no objection by the Defence to the tendering or receipt of that evidence.
5. The Prosecutor alleges that the Trial Chamber in its Decision to Recall a Detained Witness did not order that the Prosecutor make available to the Defence statements made before the Rwandan Authorities, as the Defence claims, but rather that the Prosecutor use her best endeavours to obtain those documents. Although the Prosecutor has done so, the Rwandan Government still has not produced the requested documents. Nonetheless, according to the Prosecutor, should the documents in question become available at a later stage, the witnesses in question can still be recalled.
6. In so far as it is not known if the Rwandan Authorities have any further documents, the matter is speculative.
7. If the basis of the request for these documents is so that the Defence can use them to further cross-examine the witnesses for further testing credibility, the Prosecutor argues that the credibility of these witnesses has already been tested during cross-examination, and further cross-examination relates purely to the weight to be given to the evidence.
8. The Prosecutor relies on the reasoning of Trial Chamber III in the *Decision on Defence Motion for Disclosure of Complete Statements of Witness DCH and for Cooperation of Rwandan Government*<sup>2</sup> (the "Semanza Decision") to support its propositions going to the issue of cross-examination in respect of credibility. The Prosecutor submits that, in that decision, the Trial Chamber refused to issue orders either compelling the Prosecutor to obtain statements made to Rwandan Authorities, or requiring the Rwandan Authorities to hand them over.

**DELIBERATIONS**

9. The essence of the Defence Motion rests on their contention that they have been unable to cross-examine detained witnesses GAO, GDD, GDQ and GAP on statements which they claim these witnesses gave before the Rwandan Authorities. Further cross-examination of the witnesses by the Defence on such statements would be in relation to the credibility of the witness. These statements, if they exist, have not been made available to the Parties by the Rwandan authorities. Essentially, the question at issue is whether or not these circumstances warrant the exclusion of oral testimony given before the Chamber by these witnesses.
10. Rule 89(C) allows the Chamber to "admit any relevant evidence which it deems to have probative value". Unless otherwise ruled by the Chamber, oral testimony given by witnesses before the Chamber is regarded as evidence that has some degree of relevance and probative value. Once the testimony of a witness is complete, such a ruling would be made only in exceptional circumstances, should it be in the opinion

<sup>2</sup> *Prosecutor v. Semanza*, Decision on Defence Motion for Disclosure of Complete Statements of Witness DCH and for Cooperation of Rwandan Government, 17 April 2002 (the "Semanza Decision")

of the Chamber that the Defence has clearly demonstrated that allowing the testimony to remain in evidence would cause prejudice to the right of the Accused to a fair trial, pursuant to Articles 19 and 20 of the Statute.

11. Recalling the testimonies of witnesses GDD, GDQ and GAP, and noting that the Defence had the opportunity to cross-examine these witnesses, the Chamber finds that the testimonies of these witnesses were lawfully admitted into evidence pursuant to Rule 89, and allowing them to remain will not prejudice the rights of the Accused to a fair trial.
12. Recalling the testimonies of witness GAO, and noting that the Defence had the opportunity to cross-examine this witness, in particular that the Defence even had the opportunity to cross-examine the witness with regard to credibility on duly admitted statements made by the Witness in front of the Rwandan Authorities<sup>3</sup>, the Chamber finds that the testimony of Witness GAO was lawfully admitted into evidence pursuant to Rule 89, and allowing it to remain will not prejudice the rights of the Accused to a fair trial
13. The Trial Chamber will at a later stage consider all the evidence before it, and accord the appropriate weight thereto.

**FOR THE ABOVE REASONS** the Trial Chamber

**DENIES** the Motion;

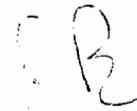
Arusha, 14 June 2002



William H. Sekule  
Judge, Presiding



Winston C. Matanzima Maqutu  
Judge



Arlette Ramaroson  
Judge



(Seal of the Tribunal)

<sup>3</sup> The facts relating to the admissibility of alleged prior statements of Witness GAO have already been reviewed by this Chamber. See *Prosecutor v. Kajelijeli*, Decision on the Defence Motion for Verification of the Authenticity of Evidence Obtained Out of Court (Rule 89(D)), 11 April 2002. See also the Chamber's Oral Ruling of 28 November 2001, Transcripts of 28 November 2001 p31-34 (English version)