



ICTR-98-44A-T
14-6-2002
(1754-1756)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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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

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

DECISION ON KAJELIJELI'S MOTION
FOR THE TRANSFER OF DETAINED WITNESSES

The Office of the Prosecutor:

Ken Flemming
Ifeoma Ojemeni
Ibukunolu Babajide

Counsel for Kajelijeli:

Lennox Hinds
Nkeyi Makanyi Bompaka

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 the “Requête de la défense relative au transfert des témoins détenus,” filed on 18 April 2002 (“the Motion”);

CONSIDERING the “Prosecutor’s Response to Defence Motion for Transfer of Detained Witnesses,” filed on 29 April 2002 (the “Prosecutor’s Response”);

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

WHEREAS the Defence prays the Chamber to order the transfer to the Tribunal’s Detention Facilities in Arusha (the “UNDF”) of ten (10) detained witnesses, detained in Rwanda who go by the pseudonyms: RHU-28, RHU-27, RHU-25, RAM, MEM, HAN, NZI, RGM, BAM and RHU-34 that it intends to call to testify at trial, until such time as the Chamber is satisfied that their presence is no longer required, pursuant to Rule 90*bis* of the Rules;

WHEREAS the Prosecutor, in her Response, supports the Motion as requested;

WHEREAS Rule 90*bis* (A) and (B) of the Rules provide:

- (A) Any Detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal; and
- (B) The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been 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) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;

WHEREAS in the instant case, the Chamber notes that the Defence does not provide official documentation from Rwandan authorities indicating whether the requirements set out under Rule 90*bis*(B) of the Rules have been met;

WHEREAS the Chamber considers that it can only grant the Motion once the provisions of Rule 90*bis*(B) of the Rules have been met;

WHEREAS the Chamber directs the Defence in co-operation with the Registry to verify as soon as possible with the Rwandan authorities that the conditions under Rule 90*bis*(B) of the Rules have been fully met and submit a report on the matter to the Chamber;

WHEREAS the Chamber is mindful of the practical arrangements necessary for the organisation of the transfer of detained witnesses, the Chamber requests the Defence in co-operation with the Registry, that it be informed in advance of the dates at which these detained witnesses could in practice 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;

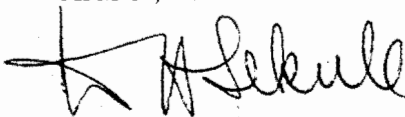
ACCORDINGLY the Chamber, on condition that the above direction has been fulfilled, grants the Motion to order the transfer the of the ten (10) detained witnesses with the pseudonyms RHU-28, RHU-27, RHU-25, RAM, MEM, HAN, NZI, RGM, BAM and RHU-34 from Rwanda to the UNDF, from the time when they are due to testify at trial and for a period not exceeding two months.

FOR THE ABOVE REASONS, THE TRIBUNAL,

GRANTS the Defence Motion as follows;

- I. **DIRECTS** the Defence in co-operation with the Registry to verify as soon as possible with the Rwandan authorities that the conditions under Rule 90*bis*(B) of the Rules have been fully met and submit a report on the matter to the Chamber; and once this direction has been fulfilled
- II. **ORDERS**, pursuant to Rule 90*bis* of the Rules, that the ten (10) detained witnesses with the pseudonyms RHU-28, RHU-27, RHU-25, RAM, MEM, HAN, NZI, RGM, BAM and RHU-34 shall be transferred temporarily from Rwanda to the UNDF from the time when they are due to testify at trial, at a date which has to be subsequently specified by the Defence, and for a period not exceeding two months;
- III. **REQUESTS** the Government of Rwanda to comply with the direction and order and to arrange for the transfer in liaison with the Registrar and the Tanzanian Government;
- IV. **INSTRUCTS** the Registrar to:
 - A. Transmit this Decision 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 Chamber of any such change.

Arusha, 14 June 2002



William H. Sekule,
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

