

ICTR-98-44A-T
19-9-2002
(1958-1956)

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United Nations
Nations Unies

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 19 September 2002

The PROSECUTOR

v.

Juvénal KAJELIJELI

Case No. ICTR-98-44A-T

JUDICIAL RECORDS
2002 SEP 19 P 50

**DECISION ON KAJELIJELI'S MOTION TO SUMMON JOSEPH NZIRORERA,
A DETAINEE AT UNDF, AS A WITNESS**

Office of the Prosecutor
Mr. Ken C. Fleming, Q.C.
Ms. Ifeoma Ojemeni

Counsel for the Accused
Professor Lennox S. Hinds
Professor Nkeyi M. Bompaka

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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:

- i. The Defence “Extremely Urgent Motion Seeking Authorisation to Summon Joseph Nzirorera, Detained at the United Nations Detention Facility, to Appear as Defence Witness in Case No. ICTR-98-44A-T, the Prosecutor v. Juvénal Kajelijeli” filed on 21 August 2002¹ (the “Motion”);
- ii. The Prosecution “Response to Defence Motion Requesting for Authorisation to Summon Joseph Nzirorera, a Detainee at the United Nations Detention Facility to Appear as a Defence Witness” filed on 16 September 2002 (The “Response”).
- iii. The Defence for Nzirorera “Witness Joseph Nzirorera’s Motion for Assistance of Counsel”, filed on 17 September 2002 (“Nzirorera’s Motion”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rules 54 and 73;

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

1. The Defence for Kajelijeli request that Joseph Nzirorera, a detainee of the United Nations Detention Facility in Arusha (UNDF) and an accused before this Tribunal, be summoned by the Chamber to give testimony in the Kajelijeli trial. They specify that the testimony will be limited to the information contained within an Affidavit provided as an annex to the Motion.
2. The Defence for Kajelijeli request that Counsel for Nzirorera be present during the hearing, in order to protect the interests of Joseph Nzirorera.
3. The Prosecution does not object to the Defence Motion, providing that Counsel for Nzirorera is restricted to a limited role throughout the entire proceedings.
4. The Defence for Nzirorera confirm that Nzirorera is willing to give testimony, but that Nzirorera requests his Defence Counsel to be present in order to protect his right against self-incrimination, pursuant to Rule 90(E) of the Rules. The Defence of Nzirorera draw the Chamber’s attention to a ruling made by Trial Chamber III on 16 April 2002 in the case of *Prosecutor v. Ntagerura*, where it was held that:

Turning now to the assistance of the witness by counsel, the Chamber considers that, although the assistance of a witness by counsel is not the usual practice in common law and civil law systems, the

¹ Original filed in French. Official English translation filed with the Registry on 13 September 2002.

exceptional circumstances of this testimony warrant that counsel be allowed to assist Gratien Kabiligi when he will be on the witness stand. These circumstances include the fact that the potential witness is an accused facing serious charges before this Tribunal, that his testimony might be related to the charges he has to answer, and that the presence of his counsel holding a watching brief may be of great importance in advising him as to his rights set out in Article 20 of the Statute and Rule 90(E).

DELIBERATIONS

5. The Chamber notes that the Defence for Kajelijeli, the Prosecution and the Defence for Nzirorera are in agreement that Joseph Nzirorera may be summoned to testify in the trial of the Accused Kajelijeli.
6. The Chamber finds that Joseph Nzirorera should be summoned in order to give testimony in the trial of the Accused pursuant to Rule 54 of the Rules.
7. The Chamber now considers Nzirorera's Motion that Counsel for Nzirorera should be present during Nzirorera's testimony.
8. The Chamber notes the ruling of Trial Chamber III in the *Ntagerura* case which the Defence of Nzirorera submit as authority for the granting of Nzirorera's Motion, and concurs with the reasoning contained therein. The exceptional circumstances of the testimony in this case, being that Witness Nzirorera is an Accused before this Tribunal facing very serious charges, and that his testimony might be related to the charges he has to answer, warrant the presence of Counsel in order to advise the witness on his rights as set out in Article 20 of the Statute and Rule 90(E) of the Rules. The Chamber finds that Counsel for Nzirorera may be present during his testimony, but that Counsel's involvement should be limited as set out above.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Defence Motion and;

DIRECTS the Registry to issue summons to Joseph Nzirorera to appear as a Witness to give testimony in this case;

GRANTS Nzirorera's Motion to allow the assistance of Counsel during his testimony.

Arusha, 19 September 2002



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

[Seal of the Tribunal]