



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

12269
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ICTR-98-41-T

2-10-2002

(12269-12267)

TRIAL CHAMBER III

Before Judges: Lloyd George Williams, Q.C., Presiding
Pavel Dolenc
Andrésia Vaz

Registrar: Adama Dieng

Date: 2 October 2002

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORDS
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**ORDER FOR THE TRANSFER OF DETAINED PROSECUTION WITNESS
OMAR SERUSHAGO**

To: The Republic of Mali and the Republic of Tanzania

Rules 73 and 90 bis of the Rules of Procedure and Evidence

The Office of the Prosecutor

Barbara Mulvaney
Chile Eboe-Osuji
Drew White
Segun Jegede
Christine Graham
Rashid Rashid

Counsel for the Defence

Raphaël Constant
Paul Skolnik
Jean Yaovi Degli
Sylvia Olympio
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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

SITTING as Trial Chamber III, composed of Judges Lloyd George Williams, Q.C., Presiding, Pavel Dolenc and Andréia Vaz (the “Chamber”);

BEING seized of the “Prosecutor’s Motion for an Order for the Transfer of a Detained Witness Pursuant to Rules 73 and 90 *bis*” filed on 17 September 2002 (the “Motion”);

CONSIDERING that the Defence did not raise any objections against the Motion;¹

NOW CONSIDERS, pursuant to Rule 73(A) of the Rules, the Motion on the basis of the written briefs only;

1. Pursuant to Rule 90 *bis* (A) of the Rules, “[a]ny 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.”

2. Pursuant to Rule 90 *bis* (B) of the Rules, a Trial Chamber may issue a transfer order only after verifying 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.

3. The Prosecutor requests the Chamber, pursuant to the above Rule, to order the temporary transfer of detained witness Omar Serushago (the Witness) from the Republic of Mali, where he is currently serving a 15 year sentence, to the United Nations Detention Facility at Arusha (UNDF)². The Witness is required to be present in Arusha no later than 30 September 2002 as the Prosecutor intends to call him “at the earliest opportunity”. The transfer period will not exceed three months.

4. The Prosecutor further submits that the requirements of Sub-Rules 90 *bis* (B) (i) and (ii) of the Rules do not apply to the Witness, in view of his being a person convicted by this Tribunal. Accordingly, the Prosecutor has not requested a letter from the relevant Malian Authorities confirming that the criteria laid out in Sub-Rules 90 *bis* (B) (i) and (ii) are met. Should the Trial Chamber’s interpretation of this Rule differ, however, she would follow any directions on this matter and supplement the request accordingly.

¹ See, *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Replies to the Motion filed on 23 September 2002 by Counsel for Accused Bagosora and on 24 September 2002 by Counsel for Accused Kabiligi and Ntabakuze. See also, Transcripts of 24 September 2002, where Counsel for Accused Nsengiyumva declares having no objections to the Motion.

² Omar Serushago was sentenced by Trial Chamber I of the Tribunal to 15 years’ imprisonment on 5 February 1999 (*The Prosecutor v. Omar Serushago*, Case no.: ICTR 98-39-S, Sentence, 5 February 1999). The Appeals Chamber confirmed his sentence on 14 February 2000 (App. Ch., *Omar Serushago v. The Prosecutor*, Case No. ICTR-98-39-A, Judgment, 14 February 2000 and Id., Reasons for Judgment, 6 April 2000). Omar Serushago is currently serving his sentence in a prison in Mali pursuant to an agreement of cooperation between the Republic of Mali and the Tribunal on the enforcement of the Tribunal’s sentences, signed on 12 February 1999.

5. The Chamber agrees with the Prosecutor that, in the specific circumstances of this case, she is not required to produce written confirmation from the Malian Authorities that the criteria set out under Sub-Rules 90 *bis* (B) (i) and (ii) are met.

6. In this regard, the Chamber notes that the Witness' transfer to the Tribunal, as requested by the Prosecutor, is not in breach of Sub-Rules 90 *bis* (B) (i) and (ii).

7. Indeed, the Witness is presently detained in Mali for the sole reason of the Government of Mali's acceptance to detain him on behalf of the Tribunal, which sentenced him on 15 February 1999 to 15 years of imprisonment with credit for the time served in detention prior to the judgement, since 9 June 1998.

8. There are therefore no reasons to believe, either that the Witness may be required for any criminal proceedings in progress in the territory of Mali during the period he is required by the Tribunal; or that his transfer to the Tribunal for a period not exceeding 3 months could extend the period of his detention in Mali.

9. The last session of the trial concluded on 26 September 2002. The hearing of the Prosecution case will resume on 18 November 2002. The Prosecutor has requested that the Witness be brought here no later than 30 September 2002. In these circumstances, the Chamber does not consider that it will be necessary or realistic to bring the Witness more than two weeks before 18 November 2002.

FOR THE ABOVE REASONS,

THE TRIBUNAL,

I. ORDERS, pursuant to Rule 90 *bis* of the Rules, that Omar Serushago be transferred temporarily to the UNDF in Arusha at the earliest on 4 November 2002 for a period not exceeding three months from the date of transfer;

II. REQUESTS the Government of Mali to comply with this order and to arrange for the transfer in cooperation with the Registrar and the Tanzanian Government;

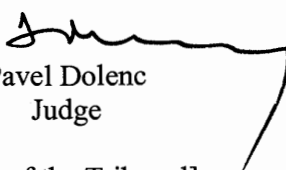
III. INSTRUCTS the Registrar to:

- A) Transmit this Order to the Governments of Mali and Tanzania;
- B) Ensure the proper conduct of the transfer, including the supervision of the Witness in the Tribunal's detention facilities;
- 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.

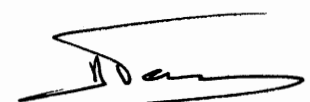
Arusha, 2 October 2002



Lloyd George Williams, Q.C.
Presiding Judge



Pavel Dolenc
Judge



Andréia Vaz
Judge

[Seal of the Tribunal]