



ICTR-98-44A-T
18-11-2002
(2110-2107)

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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: 18 November 2002

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

**DECISION ON KAJELIJELI'S MOTION SEEKING DISCLOSURE OF THE
STATEMENTS OF DEFENCE DETAINED WITNESSES**

The Office of the Prosecutor:

Ken Flemming
Ifeoma Ojemeni

Counsel for Kajelijeli:

Lennox Hinds
Nkeyi Makanyi Bompaka

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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 "Defence Motion to Seek Disclosure of Detained Witnesses' Statements to the Rwandan Authorities," filed on 8 October 2002 (the "Motion");
- ii) The "Prosecutor's Reply to the Motion for Disclosure of Statements by Defence Detained Witnesses RGM, MEM, RHU 25 and RHU 27," filed on 14 October 2002 (the "Prosecutor's Response");
- iii) The "Defence Response to Prosecutor's Reply to the Motion for Disclosure of Statements by Defence Detained Witnesses RGM, MEM, RHU 25 and RHU 27," filed on 24 October 2002 (the "Defence Reply");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence of the Tribunal (the "Rules"), in particular Rules 54, 66(A) and (B), 68 and 73 of the Rules;

NOW DECIDES the Motion solely on the basis of the written briefs as filed by the Parties, pursuant to Rule 73(A) of the Rules;

SUBMISSIONS OF THE PARTIES

1. In the Motion, the Defence requests an order, pursuant to Rules 54 and 73 of the Rules, that the statements of Defence Witnesses RGM, MEM, RHU 25 and RHU 27 taken by the Rwandan Judicial Authorities and by the Prosecutor, which may be in the possession of the Prosecutor, be inspected and disclosed to the Defence pursuant to Rules 66(B) and 68 of the Rules.

2. The Defence submits that the above-mentioned witnesses were interviewed on several occasions by the Rwandan Authorities at Ruhengeri Prison in Rwanda and that Defence Witnesses RGM and MEM were interviewed on several occasions by Prosecution staff in Arusha, Tanzania.

3. The Prosecutor requests that the Motion be dismissed because it is frivolous and lacks merit and submits that:

- i) On 9 October 2002, she disclosed to the Defence the statement of Defence Witness RGM;
- ii) Defence Witness MEM never signed a written statement although he was approached and interviewed on 17 January 2001;
- iii) The Prosecutor does not have in her possession the statements of Defence Witnesses RGM, MEM, RHU 25 and RHU 27 that were made to the Rwandan Judicial Authorities;
- iv) She has fully complied with her obligations under Rules 66(A) and 68 and she does not have in her possession any documents, which she intends to use for the cross-examination of Defence Witnesses RGM, MEM, RHU 25 and RHU 27;
- v) She urges the Defence to inspect any other documents or tangible objects in her possession pursuant to Rule 66(B) of the Rules.

4. The Defence replies by noting that the Prosecutor does not have in her possession any statements of Defence Witnesses RGM, MEM, RHU 25 and RHU 27 that were made before the Rwandan Judicial Authorities. The Defence however points out that the Prosecutor admits that she has interviewed Defence Witness MEM and therefore requests the Prosecutor to honor her obligations under Rule 68 of the Rules and disclose the "questions posed by the Prosecution to MEM and his answers."

HAVING DELIBERATED

5. The Chamber notes that the Defence, after having noted that the Prosecution does not have in her possession the statements of Defence Witnesses RGM, MEM, RHU 25 and RHU 27 that were made to the Rwandan Judicial Authorities, does not in its Reply pursue its initial request. Considering that the Prosecution does not have the said statements in its possession, the Chamber dismisses the Defence request for an order to obtain the statements of Defence Witnesses RGM, MEM, RHU 25 and RHU 27 that were allegedly made to the Rwandan Judicial Authorities.

6. The Defence further requests, pursuant to Rule 68 of the Rules the disclosure of "the questions posed by the Prosecution to MEM and his answers." The Chamber notes the obligations of the Prosecutor under Rule 68 of the Rules to be, "as soon as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence." The Chamber recalls its Decision of 5 July 2001 on behalf of the Accused, where it dismissed the Defence request pursuant to Rule 68 of the Rules because "[t]he Defence has not convinced the Chamber that said items exist or that they are exculpatory."¹

7. In the instant case, the Prosecution indicates that the interview with Defence Witness MEM was terminated and, on the day of the interview, Defence Witness MEM introduced himself and said the following: "On 7 April 1994 in the morning at 8am, the youths of Busogo Secteur came running and were shouting that they were going to revenge the death of President Habyarimana."

8. Although the Prosecution disclosed the information reflected at para 7 above, the Chamber notes that the Defence did not demonstrate how "the questions posed by the Prosecution to MEM and his answers" will be exculpatory to the Accused. Accordingly the Chamber finds that, with regard to the statement of Defence Witness MEM, the Prosecution has no obligation to disclose under Rule 68 of the Rules.

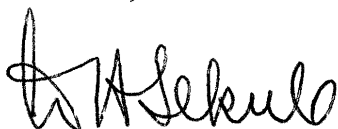
9. Regarding the Defence request for statements of Defence Witnesses RHU 25 and RHU 27, the Chamber notes that the Prosecution indicates that she does not have any other documents in her possession which she intends to use for the cross-examination of *inter alia* the said Defence Witnesses. Accordingly, the Chamber denies the Defence request and enjoins it to inspect, pursuant to Rule 66(B) of the Rules any other documents that may be in the possession of the Prosecutor.

¹See "Decision on Kajelijeli's Urgent Motion and Certification with Appendices in Support of urgent Motion for Disclosure of Materials pursuant to Rule 66(B) and Rule 68 of the Rules of Procedure and evidence," of 5 July 2001 in *Prosecutor v. Kajelijeli* at para. 14.

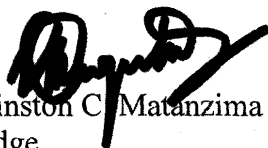
FOR THE ABOVE REASONS, THE TRIBUNAL:

DENIES the Motion in its entirety.

Arusha, 18 November 2002



William H. Sekule
Judge, Presiding



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

(Seal of the Tribunal)

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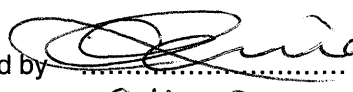


**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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