



ICTR-98-44A-T  
4. 12. 2002  
(2113 — 2111)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

2113

*ambgs.*

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 4 December 2002

The PROSECUTOR  
v.  
Juvénal KAJELIJELI  
Case No. ICTR-98-44A-T

JUDICIAL RECORDS/ARCHIVES  
RECEIVED  
ICTR  
2002 DEC -4 1 P 5:02  
*W.A.N.*

DECISION ON KAJELIJELI MOTION FOR THE DISCLOSURE OF VIDEO TAPES  
OF DEFENCE WITNESS MEM

The Office of the Prosecutor:

Ken Fleming  
Ifeoma Ojemeni  
Ibukunolu Babajide  
Dorothee Marotine

Counsel for Kajelijeli:

Lennox Hinds  
Nkeyi Makanyi Bompaka

*W.A.N.*

**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 the Defence Oral Motion argued on 27 November 2002;

**CONSIDERING** the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”), particularly Rules 66(B) and 68 of the Rules;

**NOW DECIDES** the Motion after having heard the Parties on 27 November 2002;

**SUBMISSIONS OF THE PARTIES**

*Defence Submissions*

1. The Defence requests the Prosecutor to disclose, pursuant to Rule 66(B) and 68 of the Rules the video tapes made by the Prosecution while interviewing Defence Witness MEM.
2. The Defence makes the request following the testimony of the said Witness, of 25 and 26 November 2002. The Defence submits that during his testimony, Defence Witness MEM stated that while he was interviewed, he showed the Prosecution certain sites and made commentaries challenging Prosecution witnesses while he was being filmed.
3. The Defence argues that the Prosecution should disclose the video tapes, pursuant to Rule 68, because they are exculpatory. Alternatively, the Prosecutor should permit the Defence to inspect the said video tapes, pursuant to Rule 66(B) of the Rules, because they are material to the preparation of the Defence. The Defence recalls the Chamber’s “Decision on Defence Motion Seeking to Interview Prosecutor’s Witnesses or Alternatively to be Provided with a Bill of Particulars,” of 12 March 2001 where at para. 11, the Chamber considered the Defence request for “witness interviews, either in the form of original tape recordings and/ or transcripts of the tape recordings” to be one that would fall under Rule 66(B) of the Rules.
4. The Defence argues that if the Prosecution does not wish to disclose the said video tapes pursuant to Rule 66(C) of the Rules, the Prosecution should make the appropriate application to the Chamber.

*Prosecutor Submissions*

5. In response, the Prosecution recalls the Chamber’s “Decision on Kajelijeli’s Motion Seeking Disclosure of the Statements of Defence Detained Witnesses,” of 18 November 2000, which effectively ruled on the disclosure of the statement of Defence Witness MEM. The Prosecution argued that the information provided in para. 7 of the above-mentioned Decision is the commentary made by Defence Witness MEM during his interview, when he was filmed by the Prosecution. The Prosecution submits that it has complied with all its disclosure obligations under the Rules.
6. Furthermore, the Prosecution argues that the Defence has not demonstrated neither how the said video tapes are exculpatory pursuant to Rule 68 of the Rules nor how they are

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material to the preparation of the Defence case for the Prosecution to permit their inspection pursuant to Rule 66(B) of the Rules.

**HAVING DELIBERATED:**

7. The Chamber notes that both Parties agree that the Prosecution made a video tape(s) while interviewing Defence Witness MEM and that in it, said witness made a commentary. The Chamber also notes that, whereas the Defence alleges that the said video tape(s) including the commentary is both exculpatory and material to the case of the Defence, the Prosecution disagrees with the Defence.

8. The Chamber notes the Prosecution's reliance on the Decision of 18 November 2002 to argue that the issue regarding the statement of Defence Witness MEM was conclusively resolved. However, the Chamber notes that when considering the Motion with regard to the disclosure of the statement of Defence Witness MEM, the Parties did not bring to the attention of the Chamber the fact that video tape(s) of the witness' interview was made. Therefore, when the Chamber rendered its Decision on 18 November 2002, it could not consider that there was a video tape(s) made of the witness' interview.

9. The issue before the Chamber, in the instant case therefore is whether said video tape(s) are exculpatory and/ or material to the preparation of the Defence. The Chamber recalls the testimony of Defence Witness MEM made specifically on 26 November 2002. On the basis of said testimony, the Chamber is of the opinion that the Defence has demonstrated *prima facie* that the said video tape(s) may be material to its case. The Defence should therefore be permitted to inspect the said video tape(s). Accordingly the Chamber orders the Prosecutor to permit the Defence to inspect the video tape(s) of the interview of Defence Witness MEM pursuant to Rule 66(B) of the Rules.


**FOR THE ABOVE REASONS, THE TRIBUNAL,**

**ORDERS** the Prosecutor to permit the Defence to inspect the video tape(s) of the interview of Defence Witness MEM pursuant to Rule 66(B) of the Rules.

Arusha, 4 December 2002



William H. Sekule  
Judge, Presiding



Winston C. Matanzima Maqutu  
Judge



Arlette Ramaroson  
Judge

