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ICTR-99-52-I
10-04-2003
(32094-32091)

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S. Mussa

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

Arusha International Conference Centre

P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie

TRIAL CHAMBER I

OR: ENG

Before: Judge Navanethem Pillay, presiding
Judge Erik Møse
Judge Asoka de Z. Gunawardana

Registry: Mr. Adama Dieng

Decision of: 10 April 2003

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR
v.
FERDINAND NAHIMANA
HASSAN NGEZE
JEAN BOSCO BARAYAGWIZA
(Case No. ICTR-99-52-I)

**DECISION ON THE DEFENCE REQUEST TO HEAR THE EVIDENCE OF
WITNESS Y BY DEPOSITION**

Counsel for Ferdinand Nahimana:

Mr. Jean-Marie Biju-Duval
Ms. Diana Ellis QC

The Office of the Prosecutor:

Mr. Stephen Rapp
Mr. William Egbe
Mr. Alphonse Van
Ms. Charity Kagwi
Ms. Simone Monasebian
Mr. William Mubiru

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

SITTING as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse and Judge Asoka de Z. Gunawardana;

BEING SEIZED OF a Defence request, filed on 27 March 2003, to hear the evidence of Witness Y by deposition, pursuant to Rule 71 of the Rules of Procedure and Evidence (“the Rules”), and the Defence Reply to the Prosecutor’s response filed on 4 April 2003;

CONSIDERING the Prosecution’s response, filed on 1 April 2003;

HEREBY DECIDES the Defence motion on the basis of the written submissions.

INTRODUCTION

1. On 11 and 12 December 2003, during status conferences, the Defence for Ferdinand Nahimana mentioned the possibility of adding three factual witnesses to its list of witnesses, including Witness Y. An *ex parte* hearing was held with the presiding Judge soon after the hearing on 12 December 2002. Consequently, the Defence filed a motion soon thereafter. On 13 December, the Trial Chamber made a decision, pursuant to Rule 73*ter*, allowing the Defence to call Witness Y. The Chamber ordered that his name should not be disclosed to any party until 21 days when he is ready to testify.

SUBMISSIONS OF THE PARTIES*The Defence*

2. Defence Counsel submits that the evidence of Witness Y should be heard by deposition in the interests of justice and that exceptional circumstances exist as required by Rule 71. The witness should give evidence in France because he would be able to take a direct flight from his country of residence to Paris and due to his fragile health it is preferable for him to travel as little as possible. Witness Y has categorically refused to come to Arusha to give evidence but would agree to testify by way of deposition in Europe. According to the Defence, the witness has genuine fears for his personal safety. His name has appeared on a list of genocide suspects issued in Kigali and in a document containing prominent Hutu targets. Because of his contact with a person, whom he suspects to be an informant, he is afraid to come to Arusha to testify in any way that might implicate that person. If Witness Y testifies in Africa, he fears that there is a greater likelihood that people may learn that he will be targeted, particularly by the RPF. The Defence requests that the deposition be conducted in Paris at a date convenient to the Chamber.

3. In response to the Prosecution’s response, the Defence emphasizes that a direct comparison cannot be made between Witness X and Witness Y with regard to their positions and the protection which should be afforded to each. The identity of Witness Y will be provided to the Prosecution once the Chamber has decided whether the witness Y will be heard by deposition.



4. The Prosecution recalls that when Witness X was added to its list of witnesses, the Chamber directed the Registry to provide Witness X with security information in order to ascertain his unwillingness to appear in Arusha, before a decision was taken allowing him to give his testimony elsewhere. The same procedure should be applied to Witness Y.

5. The Prosecution insists that in view of the scheduled date of closure of the media trial on 9 May 2003, the Defence must immediately disclose all information about Witness Y in order to comply with the 21 day advance deadlines in the Chamber's 3 October 2002 decision. The Defence motion for deposition should not be granted until at least such time as the Defence complies with the requirements of Rule 71. According to the Prosecution, the Defence has failed to indicate, in particular, the "name" and "whereabouts," of Witness Y, as required by that provision. The "statement of the matters" on which the witness will testify is inadequate. Should the Chamber allow the deposition of Witness Y's testimony, the Prosecution makes several requests concerning disclosure and the procedure to be followed.

DELIBERATIONS OF THE CHAMBER

7. The Chamber observes that Witness Y, similar to Witness X, purportedly was an insider in the higher echelons of authority during the events in 1994, and that, according to the Defence, his testimony will contradict the Prosecution's evidence. The Chamber considers it in "the interests of justice" to hear the witness, as required by Rule 71.

8. The Chamber notes that Witness Y is very concerned about his safety. In the case of Witness X, who held a similar view, the Chamber instructed the Registry (WVSS) to clarify whether that witness would be willing to testify in Arusha if particularly stringent security measures were adopted. The Chamber would have made a similar decision in relation to Witness Y if his reluctance to testify at the seat of the Tribunal had been based on security concerns only. However, the witness is in poor health, as confirmed by a medical certificate. The Chamber accepts that he can manage a short flight but not a long travel to Arusha. Consequently, the Chamber concludes that there are "exceptional circumstances" as required by Rule 71.

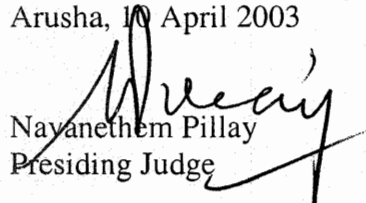
9. The Prosecution has not received adequate notice of the "name" and "whereabouts" of Witness Y and only a redacted version of the nature of the testimony that will be led from him. In order to avoid surprise and delays, the Defence shall disclose to the Prosecution the identity and other particulars of Witness Y as well as a non-redacted version of the nature of his testimony no later than 21 days before the deposition. In conformity with previous orders the Defence must provide a witness summary which gives sufficient notice to the Prosecution. In particular, the last paragraph of the statement is inadequate.

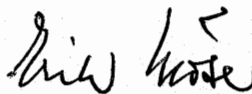
10. The Defence has requested that the deposition take place in Paris. The Prosecution argues that a neutral place should be used, and that Witness Y, who will be travelling from West-Africa to Paris, should withstand an additional hour flight from Paris to Amsterdam. The Chamber finds, for practical reasons, that the deposition should be carried out in The Hague, where courtroom facilities and Registry services are available. It considers the most suitable dates to be 1 and 2 May 2003.

FOR THE ABOVE REASONS THE CHAMBER

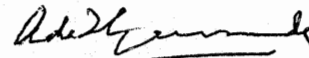
1. **DECIDES** that Witness Y shall be subject to all the measures of protection granted to other Defence and Prosecution Witnesses in the present case.
2. **DIRECTS** the Defence to disclose to the Prosecution the name, whereabouts, age, former employment and place of birth of Witness Y, as well as an adequate witness statement, no later than 21 days before the deposition commences on 1 May 2003.
3. **DIRECTS** the Registry to make the necessary arrangements to enable the evidence of Witness Y to be taken by deposition in The Hague on 1 and 2 May 2003.
4. **APPOINTS** Judge Møse as the Presiding Officer, pursuant to Rule 71 of the Rules.
5. **ADVISES** the Presiding Officer to issue a Scheduling Order before the commencement of the deposition.

Arusha, 10 April 2003


Navanethem Pillay
Presiding Judge



Erik Møse
Judge



Asoka de Z. Gunawardana
Judge

The Seal of the Tribunal

