



ICTR-98-44A-T
1. 05. 2003
(2625 — 2622)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 1 May 2003

The PROSECUTOR
v.
Juvenal KAJELIJELI
Case No. ICTR-99-44A-T

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**DECISION ON KAJELIJELI'S MOTION TO COMPEL THE PROSECUTOR TO
FACILITATE THE DEFENCE TO TAKE PHOTOGRAPHS OF ORIGINAL
DOCUMENTS IN HER CUSTODY CONTAINING GAO'S FINGERPRINTS AND
GDD'S SIGNATURES**

Office of the Prosecutor
Ifeoma Ojemeni
Dorothee Marotine

Counsel for the Defence
Lennox Hinds
Nkeyi Makanyi Bompaka

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Rwanda 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 "Extremely Urgent Motion to Compel the Prosecutor to Facilitate the Defence to take Photographs of Original Documents in her Custody Containing GAO's Fingerprints and GDD's Signatures," filed on 2 March 2003 (the "Motion");

HAVING RECEIVED AND CONSIDERED the "Prosecutor's Response to the Defence's Extremely Urgent Motion to Compel the Prosecutor to Facilitate the Defence to take Photographs of Original Documents in her Custody Containing GAO's Fingerprints and GDD's Signatures," filed on 31 March 2003 (the "Prosecutor's Response"); AND The "Defence's Reply to the Prosecutor's Response to the Defence's Extremely Urgent Motion to Compel the Prosecutor to Facilitate the Defence to take Photographs of Original Documents in her Custody Containing GAO's Fingerprints and GDD's Signatures," filed on 7 April 2003 (the "Defence Reply");

RECALLING the "Decision on the Defence Motion for Verification of the Authenticity of Evidence Obtained Out of Court (Rule 89(D))," of 11 April 2002 ("Decision on Authentication of Fingerprints") in this case, dealing with the Defence request for the Chamber to use its discretion under Rule 89(D) to order the verification of the authenticity of GAO's fingerprints on statements marked 8D, 8E and 8F; and in which the Chamber noted *inter alia* that, "[w]ithin the Rules, each Party can bring evidence it requires without invoking the Chamber's discretion," whereupon the Chamber found that there is insufficient "[r]eason in its discretion to request for verification of the authenticity of the statements in question."

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 41, 66(B), 68 and 89 of the Rules;

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

SUBMISSIONS OF THE PARTIES

Defence Submissions

1. The Defence submits that after having noted the Chamber's Decision on Authentication of Fingerprints, and what it terms as the Rwandan authorities' refusal to fulfil its obligations under Article 28 of the Statute, it proceeded to utilize its best efforts to authenticate Witness GAO's fingerprints. Towards that end, the Defence proceeded to hire a fingerprints expert who advised that he required photographs of the original documents containing the known fingerprints of Witness GAO.

2. Following said advice, the Defence made a request to the Prosecution for the originals of GAO's statements of 7 May and 19 October 1999 so that it could photograph them. The Prosecution refused this request. Consequently, the Defence filed this Motion so that the Chamber may order the Prosecution to make available to it the originals of GAO's statements so that it could photograph them.

3. Regarding GDD, the Defence notes that it had sought the recall of Prosecution witness GDD as a hostile witness but after learning of his death, it withdrew its request. Following the Prosecution's failure to make available to it the original statements of GDD of 26 June and 21 July 2000 so that it could photograph his signatures, the Defence submits this request so that the Chamber may order the Prosecution to make available to it the original statements of GDD so that it could photograph them.

4. In their Reply, the Defence submits that it seeks to photograph GDD's signature for verification by a handwriting expert so that it can request the admission of the verified statements pursuant to Rule 92*bis* of the Rules.

5. The Defence notes the provisions of Rule 41 of the Rules and submits that it does not request custody of the above-mentioned statements rather it requests the Chamber to order the Prosecution to provide "special arrangements to make photographic copy only of the portions of the said statements containing GAO's fingerprints and GDD's signatures, as the case may be."

Prosecutor's Response

6. The Prosecution objects to the Motion.

7. The Prosecution draws the attention of the Chamber to the provisions of Rule 41 of the Rules and suggests that the Defence should have made its request to inspect the said statements under Rule 66(B) of the Rules as it is its entitlement.

8. The Prosecution submits that the issue of authentication of the fingerprints of GAO has been ventilated and ruled upon in the Chamber's Decision on Authentication of Fingerprints and that this Motion, which is an attempt to re-open the issues through the back door, is *res judicata*.

9. Regarding the request for the signatures on GDD's original statements, the Prosecution submits that the Defence has not demonstrated a basis for its request.

10. The Prosecution submits that the documents in question contain confidential information on protected Prosecution witnesses, which should not be disclosed to a third party including a Defence fingerprints expert. The Prosecution suggests that the photographic copy should only be of the portions containing GAO's fingerprints and GDD's signatures, as the case may be.

HAVING DELIBERATED

9. The Chamber recalls that in its Decision on Authentication of Fingerprints it declined to use its discretion to request for verification of the authenticity of the statements of Prosecution witness GAO. In the instant Motion the Defence requests that the Chamber order the Prosecution to provide special arrangements to the Defence to make photographic copy of the portions of the original statements containing GAO's fingerprints and GDD's signatures. The Chamber is of the opinion that the instant Motion does not fall within the principles of *res judicata*. At any rate the issue in the instant Motion is not the same as that which was before the Chamber when it made its Decision on Authentication of Fingerprints. The Chamber thus finds that this Motion is not barred under the principles of *res judicata*.

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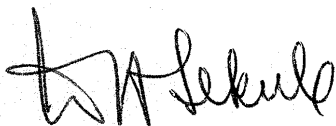
10. The Chamber notes that the Defence is in a position to know its case best and that it knows best how it will use any information in its custody for the preparation of its defence. In any case, noting that the Prosecution does not indicate any prejudice to it were it to provide the special arrangements requested for by the Defence, the Chamber thus finds the Defence request to photograph portions of the original statements containing GAO's fingerprints and GDD's signatures to be reasonable.

11. Accordingly, the Chamber orders the Prosecution to provide the Defence with an arrangement to make photographic copy only of the portions of the original statements containing GAO's fingerprints and GDD's signatures.

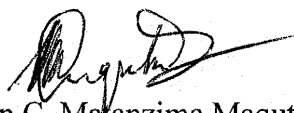
FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Motion, and orders the Prosecution to provide the Defence with an arrangement to make photographic copy only of the portions of the original statements containing GAO's fingerprints and GDD's signatures.

Arusha, 1 May 2003



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramarison
Judge



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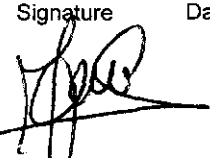
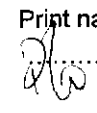
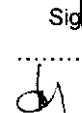


**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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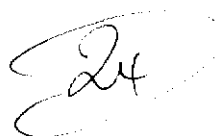
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