



ICTR-99-54A-T
23. 5. 2003
(1332 — 1328)
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: 23 May 2003

The PROSECUTOR
v.
Jean de Dieu KAMUHANDA

Case No. ICTR-99-54A-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2003 MAY 23 P 1:06

**DECISION ON KAMUHANDA'S MOTION FOR DISCLOSURE AND ADMISSION
OF AUDIOTAPED INTERVIEWS OF FORMER PRIME MINISTER JEAN
KAMBANDA (Rule 89(C))**

Office of the Prosecutor

Douglas M. Moore
Ibukunolu Alao Babajide
Dorothee Marotine

Counsel for the Defence

Aïcha Condé
Patricia Mongo

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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 the “Motion for Disclosure and Admission of Audio-taped Interviews of Former Prime Minister Jean Kambanda (Rule 89(C) of the Rules of Procedure and Evidence),” filed on 10 February 2003 (the “Motion”);

HAVING RECEIVED AND CONSIDERED the “Prosecutor’s Response to Defence Motion for Disclosure and Admission of Audio-taped Interviews of Former Prime Minister Jean Kambanda (Rule 89(C) of the Rules of Procedure and Evidence),” filed on 10 March 2003 (the “Prosecutor’s Response”); **AND** the “*Conclusions en réplique aux fins de communication et d’admission des cassettes des entretiens de l’ancien Premier Ministre Jean Kambanda au dossier de la défense. Art. 89 C du Règlement de Procédure et de Preuve,*” filed on 22 April 2003 (the “Defence Reply”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular Rules 66(B), 89(C) and 98 of the Rules;

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

SUBMISSIONS OF THE PARTIES

Defence Submissions

1. The Defence requests that the Chamber order the Prosecution to disclose to it, pursuant to Rule 66(B) and 68 and alternatively Rule 98 of the Rules, the audio-taped interviews of Former Prime Minister Jean Kambanda found in cassette no. 30 marked K00048601 (“Cassette 30”). The Defence requests the disclosure of Cassette 30 because it intends to request its admission into evidence pursuant to Rule 89(C) of the Rules.
2. The Defence seeks to have Cassette 30 introduced into evidence because in it Jean Kambanda corroborates the Accused’s testimony-in-chief, when the Accused explained the circumstances that led to his becoming a Minister for Higher Education and Scientific Research of the Interim Government of Rwanda in 1994, and the reasons why he could not resign from said position in fear of being considered an accomplice of the RPF. The Defence submits that during cross-examination on 28 August 2002, on being asked by the Prosecution to furnish proof of what he was asserting on the occasion, he answered, “[t]he only evidence I can give to this Trial Chamber, you have it, and this is – and this is in the statement that Kambanda gave you about me as a minister. That is the only proof, the only evidence available.” It is the Defence argument that Cassette 30 tends to suggest the Accused’s innocence or mitigate his guilt or it may affect the credibility of Prosecution evidence.
3. The Defence relies on the case law of the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”); in particular the ICTY Appeals Chamber Decision in *Aleksovski* of 16 February 1999 and the Trial Chamber Decision of *Delalic*.¹ The Defence

¹ See in particular “Decision on the Motion of the Prosecution for the Admissibility of Evidence,” of 19 January 1998 in *Prosecutor v. Delalic* (the “*Delalic* Decision”);

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submits that the interview of Kambanda contained in Cassette 30 is relevant and material since it tends to enlighten the Tribunal on the essential and disputed issue regarding the Accused's responsibility as Minister in the Interim Government. The Defence submits that the interview contained in Cassette 30 is credible because it was voluntarily made by Jean Kambanda when he agreed to cooperate with the Office of the Prosecutor. The Defence thus submits that Cassette 30, in which Jean Kambanda describes the Accused's conduct within the Government accurately reflects events, which he witnessed when he was Prime Minister of the Interim Government and presided over cabinet meetings from 8 April to 16 July 1994.

4. The Defence prays the Chamber to order the Prosecution to disclose Cassette 30 to it and subsequently to admit it into evidence pursuant to Rule 89(C).

Prosecutor's Response

5. The Prosecution accepts in principle the Defence request but urges the Chamber to admit all of the audio-taped interviews of Former Prime Minister Jean Kambanda pursuant to Rule 89(C) of the Rules, rather than grant the Defence request to admit the narrow and unrepresentative excerpts found in Cassette 30. The Prosecution argues that it is in the interests of justice that the Chamber considers the full and complete impact of the interviews in the context of the role of the interim government in the planning and execution of the genocide in Rwanda.

6. The Prosecution requests the Chamber to consider the main themes of the interviews of Jean Kambanda contained in Cassettes 1 to 80 in order to draw conclusive inferences with respect to the involvement of the Accused. The main themes of the interviews that the Prosecution has identified include: the formation, membership and functioning of the 1994 Interim Government.

7. The Prosecution submits that the Defence admits that the Accused was a member of the Interim Government, which had the "[c]onvergence of the ideology of 'Hutu power' and 'Anti-Tutsi' stances."² The Accused admits to having attended meetings of the Interim Government. The Prosecution argues that overall, the Jean Kambanda interviews demonstrate the criminal culpability of the entire membership (including the Accused) of the Interim Government for the 1994 massacres.

Defence Reply

8. The Defence objects to the Prosecution request to have the rest of the Kambanda interviews entered into evidence because, it submits, in its defence, it presents its evidence to challenge one by one, the allegations against the Accused as charged in the indictment. The Defence argues that if the rest of the Kambanda tapes were admitted at this late stage when it is presenting its final pieces of evidence, it would violate the rights of the Accused as guaranteed under Article 20 of the Statute.

9. The Defence further argues that since the Accused has been acquitted of Conspiracy to Commit Genocide, the Prosecution cannot now bring the rest of the Kambanda tapes to

² See Prosecutor's Response at para. 14.

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demonstrate the criminal culpability of the entire membership of the Interim Government for the massacres of 1994.³

10. In any case, the Defence submits that the indictment against the Accused does not allege that the Accused was involved with the other members of the Interim Government in a criminal enterprise to commit the massacres of 1994. The Defence refers to the ICTY Appeals Chamber Decision of 23 October 2001 in *Kupreskic*, which ruled that an indictment should be sufficiently detailed so as to enable the accused to prepare his defence. The Defence argues that the rest of the Kambanda tapes cannot be admitted because they relate to matters with which the Accused is not specifically charged in his indictment, and will be unduly embarrassed and prejudiced in their defence.

11. The Defence submits furthermore that it is only in Cassette 30 that Jean Kambanda mentions the Accused and not in any of the other Cassettes where he speaks of the formation, membership and functioning of the 1994 Interim Government. The Defence thus argues that for the purposes of litigation of the case against the Accused, Cassette 30 is the only pertinent piece of evidence.

HAVING DELIBERATED

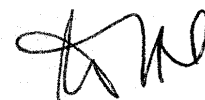
12. In its Motion, the Chamber notes that the Defence requests disclosure of Cassette 30, after having inspected all of the interviews of Jean Kambanda found in audio-tapes, which are in the possession of the Prosecution. It is the Chamber's opinion that this Defence request should be granted, particularly as the Prosecution does not object to the request. Accordingly, the Chamber orders the Prosecution to immediately produce to the Defence and to the Registry a certified copy of the original of Cassette 30 marked K0048601.

13. Regarding the Defence further request to have said Cassette 30 admitted into evidence pursuant to Rule 89(C), the Chamber notes that the Prosecution conditionally consents to the request.

14. As regards whether said interviews are relevant and of probative value in the case of Kamuhanda, the Chamber first observes that both the Prosecution and the Defence have concluded formal presentation of evidence at trial. On the basis of the submissions of the Defence, Cassette 30 specifically relates to a disputed issue that arose during cross-examination when the Accused was testifying on his own behalf on 28 August 2002. On this date, the Accused was testifying with regard to the circumstances surrounding his appointment as Minister for Higher Education and Scientific Research and his conduct as a member of the Interim Government of Rwanda in 1994. It is the Chamber's opinion that in the case before it, Cassette 30 may be admitted under Rule 89(C) because it may be relevant in the line of the Accused's defence.

15. However, the Chamber notes that the rest of the audio-tapes do not relate to specific issues that arose during the trial on the merits, rather, as the Prosecution alleges, in the audio-tapes Jean Kambanda describes the context of the role of the Interim Government of Rwanda of 1994 in the planning and execution of the genocide. The Prosecution could have, during the course of the trial on the merits, sought to use Jean Kambanda's interviews to support its case, but it did not. On this basis, the Chamber denies the Prosecution request.

³ See "Decision on Kamuhanda's Motion for Partial Acquittal Pursuant to Rule 98bis of the Rules of Procedure and Evidence," of 20 August 2002



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16. The Chamber thus grants the Defence request and admits into evidence Cassette 30 marked K0048601 pursuant to Rule 89(C) of the Rules and it further directs the Registry to supply Cassette 30 with an exhibit number sequentially following the last Defence exhibit produced in this case and to inform the Parties and the Chamber accordingly.

FOR THE ABOVE REASONS, THE TRIBUNAL

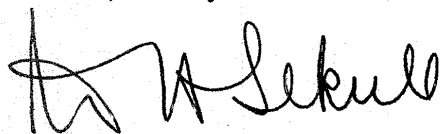
GRANTS the Defence request, and;

- I. **ORDERS** the Prosecution to immediately produce to the Defence and to the Registry a certified copy of the original of Cassette 30 marked K0048601; and
- II. **ADMITS** into evidence Cassette 30 marked K0048601 pursuant to Rule 89(C) of the Rules; and

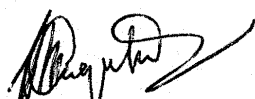
DIRECTS the Registry to supply Cassette 30 with an exhibit number sequentially following the last Defence exhibit produced in this case and to inform the Parties and the Chamber accordingly.

DENIES the Prosecution request to admit the rest of the interviews of Jean Kambanda captured in audio-tapes 1 to 80.

Arusha, 23 May 2003



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

