



United Nations
Nations Unies

ICTR-98-44A-T
1.7.2003
(2969 — 2966)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2969
ambeg.

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 1 July 2003

The PROSECUTOR

v.

Juvénal KAJELIJELI

Case No. ICTR-98-44A-T

2003 JUL -1 P 5:11
JUDICIAL RECORDS/ARCHIVES
RECEIVED

**DECISION ON KAJELIJELI'S MOTION TO ADMIT INTO EVIDENCE
AFFIDAVITS PURSUANT TO RULE 92 *BIS* (B)**

Office of the Prosecutor
Ms. Ifeoma Ojemeni
Ms. Dorothee Marotine (Case Manager)

Counsel for the Accused
Professor Lennox S. Hinds
Professor Nkeyi M. Bompaka

2968

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Winston C. Matanzima Maqutu and Judge Arlette Ramaroson (the "Chamber");

BEING SEIZED of:

- i. The Defence "Extremely Urgent Motion to Admit into Evidence Affidavits of MN, CB, and EK Pursuant to Rule 92 *bis* (B)", filed on 10 June 2003 (the "Defence Motion");
- ii. The "Prosecutor's Response to the Defence Extremely Urgent Motion for Admission Into Evidence of Affidavits of MN, CB, and EK Pursuant to Rule 92 *bis* (B)", filed on 24 June 2003 (the "Prosecution Response");

NOTING that the Defence has indicated that it does not intend to file a Reply to the Prosecution Response;¹

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence,² particularly Rule 92 *bis*;

NOW CONSIDERS the matter solely on the basis of the written briefs of the Parties, pursuant to Rule 73(A);

PRELIMINARY MATTER

1. The Chamber notes that the Prosecution Response was filed late. However, considering the circumstances of the Defence Motion, which was filed unexpectedly, and only six days before the deadline set by the Chamber for the filing of the Prosecution closing brief, the Chamber finds it reasonable to consider the Prosecution Response.

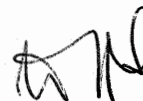
SUBMISSIONS OF THE PARTIES

2. The Defence brings a Motion to admit into evidence, pursuant to Rule 92 *bis* (B), sworn affidavits of three persons. These are, Matthieu Ngirumpatse, Casimir Bizimungu, and Edouard Karemera. All three persons currently stand accused before this Tribunal, and are detainees of the United Nations Detention Facility (UNDF).
3. The affidavit of Ngirumpatse deals with matters relating to the position of the Accused within the MRND party.³ The affidavit of Bizimungu relates to the position of the Accused

¹ Correspondence from the Defence to the Court Management Section, 30 June 2003

² Unless otherwise stated, all references to Rules are to be construed as references to the Rules of Procedure and Evidence.

³ Affidavit of Matthieu Ngirumpatse, dated 27 June 2002



2967

within the MRND party.⁴ The affidavit of Karemera relates to various positions of authority held by the Accused.⁵

4. The Prosecution objects to the Defence Motion. It claims that the information contained in the affidavits goes to proof of the acts and conduct of the Accused, and thus it is not possible to admit the evidence under Rule 92 *bis*. The Prosecution also challenges the veracity of the information contained in the affidavits, and should it be introduced, it would require cross-examination of the makers of these affidavits.

DELIBERATIONS

5. The information in the affidavits deals with issues central to the Prosecution case. Under Rule 92 *bis* (A), evidence may only be admitted which goes to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment. The Defence brings this Motion under Rule 92 *bis* (B). However the provisions of Rule 92 *bis* (B) must be read in the context of the rule as a whole. Thus, the Chamber finds that this information is inadmissible under Rule 92 *bis*.
6. The Defence offers no explanation why these persons, detainees of the United Nations Detention Facility (UNDF), were not summoned as witnesses before the Chamber during the Defence case. The Defence clearly had access to all of this information during the presentation of its case, and chose not to make it available to the Chamber at that time. It offers no explanation why these affidavits, all dated in June 2002, are only placed before this Chamber almost one year after they were made, after the Defence case has closed, and just days before the Prosecution is due to file its closing brief. This placed the Prosecution under a level of uncertainty at a critical time, which the Chamber finds unacceptable.
7. Furthermore, as these affidavits deal with issues central to the Prosecution case, it would have been necessary to allow the Prosecution the opportunity to cross-examine the makers of these affidavits. Thus, the application is made too late.
8. The Chamber does not approve of the conduct of Defence Counsel in attempting to introduce this information at this final stage in the proceedings.

⁴ Affidavit of Casimir Bizimungu, dated 20 June 2002

⁵ Affidavit of Edouard Karemera, dated 28 June 2002


FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motion

Arusha, 1 July 2003

L. A. Sekula

William H. Sekule
Presiding Judge


M.C. Matanzima Maq

Winston C. Matanzima Maqutu
Judge

RUB

Arlette Ramaroson
Judge

