

ICTR-98-44A-T
1.7.2003
(2972 — 2970)

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United Nations
Nations Unies

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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

JUDICIAL RECORDS ARCHIVES
ICTR
2003 JUL -1 P 5:11

**DECISION ON KAJELIJELI'S MOTION TO ADMIT INTO EVIDENCE
VIDEOTAPE EVIDENCE OF WITNESS GDD PURSUANT TO RULE 92 *BIS* (A)**

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

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

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 Video-Tape of Prosecution Witness GDD Pursuant to Rule 92 *bis* (A)”, filed on 10 June 2003 (the “Defence Motion”);
- ii. The “Prosecutor’s Response to the Defence Extremely Urgent Motion for Admission Into Evidence of Videotape of Prosecution Witness GDD Pursuant to Rule 92 *bis* (A)”, 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.

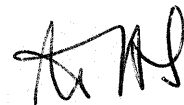
SUBMISSIONS OF THE PARTIES

2. The Defence brings a Motion to admit into evidence, pursuant to Rule 92 *bis*, a videotape allegedly containing statements made by Prosecution Witness GDD.³ It is claimed that in this videotape, Witness GDD, whilst discussing his crimes and the names of other people implicated therein, does not mention the name of the Accused.
3. The Prosecution objects to the granting of the Defence Motion. It submits that the videotape does not qualify as a written statement under Rule 92 *bis* (A) and therefore cannot be admitted under this Rule. It also draws to the Chamber’s attention the fact that

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 Videotape entitled “Justice des Hommes”, *Avocats Sans Frontières*



this videotape has been available to the Defence during the course of their case, and that they chose not to attempt to introduce it at this stage.

DELIBERATIONS

- 4. The Defence offer no explanation why it did not attempt to introduce this information as evidence during the Defence case. It offers no explanation why it brings this information before the Chamber only days before the Prosecution is due to file its closing brief.
- 5. Rule 92 *bis* states that:

A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

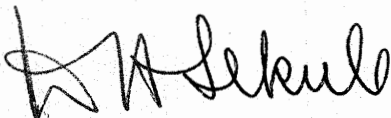
The Defence does not adequately explain the circumstances under which this videotape was taken, or the specific issues addressed by the material. It does not give sufficient reasoning why the Chamber might admit a videotape under this Rule. The Chamber finds that the Defence has failed to make out its case that this videotape is admissible under Rule 92 *bis* (A).

- 6. The Chamber does not approve of the conduct of Defence Counsel in attempting to introduce this information at this final stage of the proceedings.

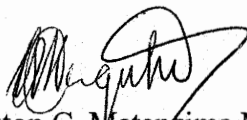
FOR THE ABOVE REASONS, THE TRIBUNAL

DENIES the Defence Motion

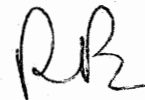
Arusha, 1 July 2003



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

