



ICTR-98-44A-T
28-11-2003
(3269-3267)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3269
Mwamba

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 28 November 2003

The PROSECUTOR
v.
Juvenal KAJELIJELI

Case No. ICTR-99-44A-T

JUDICIAL RECORDS SECTION
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**DECISION ON DEFENCE MOTION TO HOLD THE FIRST DEPUTY
PROSECUTOR OF RWANDA IN CONTEMPT OF THE TRIBUNAL**

Office of the Prosecutor
Ifema Ojemeni

Counsel for the Defence
Lennox Hinds
Nkeyi Makanyi Bompaka

LNS

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 Ramarosan (the "Chamber");

BEING SEIZED of Kajelijeli's "Notice of Leave to File Extremely Urgent Motion to Hold the First Deputy Prosecutor of Rwanda, Mr Rukira Wa Muhizi, in Contempt of the Tribunal Pursuant to Rule 77(C) of the Rules of Procedure and Evidence" and the supporting "Certification" filed on 22 November 2001 (the "Motion");

NOTING that the complaint in the Motion is that potential Defence witnesses NZT, NDB, and RHU-27, as well as the confidential source CSR-1, had informed the Defence Counsel that the First Deputy Prosecutor of Rwanda, Mr Augustin Rukira Wa Muhizi, had threatened and intimidated the potential Defence witnesses on or about 25 September 2001, when Defence Counsel was about to interview them as potential witnesses for the Defence.

FURTHER NOTING the following:

- (a) On 12 December 2001, the Chamber directed the Registry to communicate the Defence Motion to the Government of Rwanda for their comments and or submissions. In the Direction, the Chamber recalled the provisions of Article 28 of the Statute (requiring States to cooperate with the Tribunal) and Rule 74 of the Rules (enabling the Tribunal to invite submissions from States, where such a course is deemed appropriate);
- (b) By a facsimile transmission dated 14 December 2001, the Registrar of the Tribunal wrote to Rwandan Minister of Foreign Affairs and Regional Cooperation inviting the Government of Rwanda to comment or make submissions on the Motion, as directed by the Chamber;
- (c) On 13 February 2002, the Registrar of the Tribunal wrote again to the Rwandan Minister of Foreign Affairs and Regional Cooperation, reminding the Government of Rwanda to communicate their position on the Motion;
- (d) In response to the Registrar's correspondence, the *Procureur Général* of the Supreme Court of Rwanda wrote to Defence Counsel on 8 February 2002, copying the Registrar among other persons. In his correspondence, the *Procureur Général* requested the identities of the potential Defence witnesses NZT, NDB and RHU-27, as well as the confidential source CSR-1, in order to enable him to investigate their allegations and put the Government of Rwanda in a position to communicate their position on the Motion, as they had been invited to do;
- (e) On or about 4 March 2002, Defence Counsel wrote to the Registrar, communicating to the Registrar the identities of NZT, NDB and RHU-27 only. In his correspondence, Defence Counsel insisted that the Registrar must not disclose those identities to the Government of Rwanda without first putting in place special witness protection measures; and
- (f) On 20 March 2002, the Registrar wrote his comprehensive report on the matter. In his report, the Registrar indicated, among other things, that it will not be possible, in the

NOTING FURTHER that on 18 August 2003, Witness RHU-23 alleged that he had been beaten by family members of Witness GAS and requested WVSS-D Officers to intervene to ensure his protection;

NOTING that on 22 August 2003, WVSS-D Officers investigated, once again, the allegations. It was discovered that Witness RHU-23 had no signs of wounds and that, in fact, he had a quarrel with one of his neighbours. As a result of this dispute Witness RHU-23 assaulted the aforementioned neighbour and reported the incident to the police which opened a file and heard witnesses. Thereafter, Witness RHU-23 was put in police custody on 19 August 2003 for assaults and was transferred on 22 August 2003 to the Rwandan Public Prosecutor's Office where he was questioned and released the same day;

CONSIDERING that following an investigation into the matter, the Registrar of the Tribunal found that there is no evidence of harassment against Witness RHU-23;

CONSIDERING that from the previous and current assessments made by WVSS-D Officers, no link has been established between the testimony of the witnesses before this Tribunal and their current situations as described herein;

CONSIDERING the Registrar's view, with which the trial Chamber agrees, that being a protected witness before this Tribunal does not afford any witness immunity from the ordinary legal process of their domestic jurisdiction;

THE TRIAL CHAMBER HEREBY

DISMISSES the Defence Motion in all respects.

Arusha, 28 November 2003



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramarison
Judge

