



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
05-12-2003
(17823 - 17821)

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S. Musa

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 5 December 2003

JUDICIAL DEPARTMENT
2003 DEC -5 A 11:50

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

DECISION ON CERTIFICATION OF APPEAL CONCERNING TESTIMONY OF
WITNESS DBQ ON THE BASIS OF RULE 95

The Office of the Prosecutor

Barbara Mulvaney
Drew White
Segun Jegede
Alex Obote-Odora
Christine Graham
Rashid Rashid

Counsel for the Defence

Raphaël Constant
Paul Skolnik
Jean Yaovi Degli
David Martin Sperry
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

K.K.

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber I, composed of Judge Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Kabiligi Defence Application for Certification for Appeal Under Rule 73(B)”, filed on 25 November 2003;

CONSIDERING “Requête en extrême urgence de la Défence aux fins de rejet de nouvelles déclarations”, etc., filed by the Defence for Gratien Kabiligi on 22 September 2003;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence for Kabiligi seeks certification of an appeal from the Decision of the Chamber of 18 November 2003 concerning the admissibility of testimony disclosed shortly before the date of testimony of Witness DBQ. That Decision dealt with two Defence motions, one filed jointly, and the other filed by the Defence for Kabiligi. The joint Defence motion objected to Witness DBQ’s testimony on a single ground: the timeliness of the disclosure of the evidence. The Kabiligi motion raised that same objection in relation to Witness DBQ, but it also raised three other objections. One of those objections was that Witness DBQ’s evidence (and any other new testimony of other witnesses against the Accused Kabiligi) should be excluded under Rule 95 because it had been “concocted” by the Prosecution in retaliation for failed plea-bargain negotiations.¹ The other two matters raised were the Prosecution’s asserted obligation to produce Rwandan judicial dossiers of any and all witnesses; and the Prosecution’s failure to disclose known statements of Witnesses DN and DY.

SUBMISSIONS

2. The Defence for Kabiligi observes that the Chamber did not address the Rule 95 argument in its Decision and claims that this is, itself, a ground for certifying an appeal as “the absence of any consideration of this serious matter significantly affects the fair and expeditious conduct of the proceedings.”² After recapitulating the arguments in its original motion, the Defence for Kabiligi insists that these arguments should have been considered carefully. The motion then covers ground similar to that presented in a joint motion concerning late disclosure, based on Article 20(4)(a) of the Statute, and Rules 66(A)(ii), 73bis(B) and 67(D). The questions raised involve matters that meet the criteria in Rule 73(B) of the Rules

DELIBERATIONS

3. Rule 73(B) of the Rules of Procedure and Evidence (“the Rules”) provides that Decisions on motions are without interlocutory appeal unless certified by the Trial Chamber:

which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

¹ Kabiligi Defence Application for Certification for Appeal Under Rule 73(B), para. 2.

² *Id.* para. 6.

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4. To the extent that it raises Rule 95 as a ground of appeal, the motion is rejected as premature. The Rule 95 objection in relation to Witness DBQ and other witnesses was not mentioned in the decision simply because it was not decided and remains pending. Similarly, the two other heads of objection, concerning judicial dossiers and Witnesses DN and DY, also remain pending. The only issue that was addressed in the Decision was the timeliness of disclosure and the impact of timeliness on the admissibility of the evidence. No mention whatsoever was made of Rule 95 because it is a separate ground of objection, raised as such in the initial Kabiligi motion.


5. To the extent that the motion raises issues concerning the timeliness of disclosure evidence, the Chamber finds these submissions substantially duplicative of the submissions filed jointly by the Defence, including the Defence for Kabiligi, on 25 November 2003, also decided by the Chamber today. Accordingly, half of the cost arising from the present motion is denied.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 5 December 2003


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

