



UNITED NATIONS
NATIONS UNIES

ICTR-01-71-1
11-12-2003
(1321 - 1319)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzanie

Tel: 255 27 2504207-11 2504367-72 or 1 212 963 2850 Fax: 255 27 2504000/2504373 or 1 212 963 2848/49

1321
S. Mussa

TRIAL CHAMBER 1

Before: Judge Erik Møse, presiding
Judge Khalida Rashid Khan
Judge Solomy Balungi Bossa

Registrar: Adama Dieng

Date: 10 December 2003

THE PROSECUTOR

v.

Emanuel NDINDABAHIZI

Case No. : ICTR-2001-71-T

JUDICIAL DEPARTMENT
ICTR
2003 DEC 11 A 10:10

DECISION ON PROSECUTION'S MOTION FOR SANCTIONS AGAINST DEFENCE COUNSEL

The Office of the Prosecutor

Charles Adeogun-Phillips
Wallace Kapaya
Peter Tafah

The Defence

Pascal Besnier
Guillaume Marçais

S. Mussa

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

SITTING as Trial Chamber I composed of Judge Erik Møse, presiding, Judge Khalida Rashid Khan and Judge Solomy Balungi Bossa;

BEING SEIZED OF the Prosecution’s oral motion of 16 September 2003 for sanctions against Defence Counsel Guillaume Marçais, pursuant to Rule 46 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING the Defence’s oral response of the same date;

HEREBY DECIDES the motion.

INTRODUCTION

1. During her cross-examination on 16 September 2003, Witness CGL stated that she gave her statement to ICTR investigators prior to testifying before Rwandan courts.¹ Defence Counsel Guillaume Marçais asked the witness to repeat that testimony with the knowledge that she was under oath. When the witness reaffirmed that statement, Me. Marçais stated that he reserved the right to submit a document showing the contrary. The Chamber requested that the document be put before the witness for her comment. Me. Marçais then asked the Registry “to show this document to the Court and the witness for her to indicate if this, indeed, is her”.² The Prosecution objected that “there is no relationship between this name and this witness” and suggested that the Defence had “la[id] an ambush”. The Prosecution asked that Me. Marçais be sanctioned. In response to a question from the Presiding Judge, the witness confirmed that the name mentioned in the document presented by the Defence was not her name.³ The Prosecution renewed its application at the end of the witness’s testimony.⁴

SUBMISSIONS

2. The Prosecution submitted that the questions put to the witness were not made in good faith and were intended to destroy her reputation and to mislead both the witness and the judges by erroneously suggesting that she had lied. The Prosecution stated that the Defence could not have been unaware that the name in the document was not that of the witness.⁵

2. The Defence stated that it had just received the Kinyarwanda document in question, that it had not yet had the opportunity to have it translated, and that it had been misdirected by the similarity of the name of the witness and the name on the impeaching document. Further, the Defence suggested that even if the names on the two documents were different, the Defence was still entitled to test the witness on the issue, given the possibility that the Prosecution had made a mistake in identifying the name of the witness. The Defence further argued that no prejudice had been caused as the witness had simply indicated the error to the Chamber. In

¹ T. 16 September 2003, p. 44 (French). The English transcript says the opposite, but there is a “(sic)” in the relevant sentence, suggesting that there was some error in the translation or transcription. T. 16 September 2003, p. 40.

² *Ibid.* p. 41.

³ *Ibid.*

⁴ *Ibid.* p. 58.

⁵ *Ibid.*

any event, sanctions could not be imposed under Rule 46 unless a prior warning had been given. There had been no intent to be offensive or misleading to the witness or the Chamber.⁶

4. On 28 November 2003, the Chamber informed the parties that the motion had been denied, and that a written decision would be communicated later.⁷

DELIBERATIONS

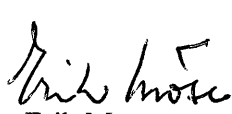
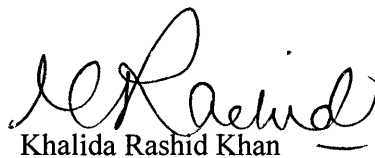

5. According to Rule 46(A) “a Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice”.

6. The Chamber dismisses the present application. No prior warning was given by the Chamber. Furthermore, there has been no showing that the conduct in question was offensive or abusive, obstructed the proceedings, or was otherwise contrary to the interests of justice. The Defence avers that its questioning arose from an honest mistake concerning the witness’s identity; the explanation is plausible and no evidence has been presented to the contrary. The Defence was entitled to determine whether its understanding of the document, which would have impeached the witness’s testimony, was correct.

FOR THESE REASONS THE CHAMBER

DENIES the motion.

Arusha, 10 December 2003

		
Erik Møse Presiding Judge	Khalida Rashid Khan Judge	Solomy Balungi Bossa Judge

[Seal of the Tribunal]



⁶ *Ibid.* pp. 58-59.
⁷ T. 28 November 2003, p. 18 (French).