

ICTR-98-41-T
17-12-2003
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(17945'-17943)

17945'

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 17 December 2003

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA
Case No. : ICTR-98-41-T

JUDICIAL RECORDS
1077
2003 DEC 17 A 12:00

DECISION ON MOTION TO HOLD WITNESS XAP IN CONTEMPT

The Office of the Prosecutor

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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 “Motion for the Tribunal to Hold Witness XAP In Contempt for Repeatedly Refusing to Answer a Question”, filed by the Defence for Ntabakuze on 15 December 2003;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 11 December 2003, Witness XAP was asked by the Presiding Judge, following a question by the Defence for Ntabakuze, to identify his ethnicity or, in the alternative, his ethnic identity as it was perceived in 1994. The witness refused to answer the questions, stating that he had been assured by individuals who had interviewed him that he would not be required to identify his ethnicity during his testimony. On 15 December, during further cross-examination, the witness said that it would be against the Rwandan Constitution for him to identify his ethnicity. After several further efforts to elicit an answer to the question, the Chamber stated that it would consider the refusal to answer in its assessment of the witness’s credibility.

2. The Defence has filed the present motion requesting that Witness XAP be held in contempt for refusing to answer these questions concerning his ethnic identity.

DELIBERATIONS

3. Rule 77(A) of the Rules of Procedure of Evidence provides:

The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly interfere with its administration of justice, including any person who

(i) being a witness before a Chamber, contumaciously refuses to answer a question....

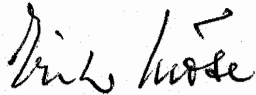
4. The witness’s reasons for not answering the questions appear to be rooted in convictions about the irrelevance of ethnicity to his testimony before the Chamber. While it is for the Chamber, and not witnesses, to determine which matters are of relevance, no purpose would be served in the particular circumstances of this case by holding the witness in contempt. As the Chamber ruled orally, the refusal to answer the questions will be taken into account in the evaluation of the witness’s credibility.

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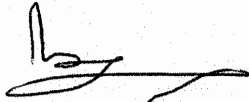
FOR THE ABOVE REASONS, THE CHAMBER

DENIES THE MOTION.

Arusha, 17 December 2003



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

