



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

Before:

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

Registrar: Adama Dieng

Date: 27 January 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

DECISION ON EXCLUSION OF EVIDENCE UNDER RULE 95

The Office of the Prosecutor

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Counsel for the Defence

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

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

BEING SEIZED OF the “Requête en extrême urgence”, etc., filed by the Defence for Kabiligi on 22 September 2003;

HEREBY DECIDES the motion.

INTRODUCTION

1. Four distinct matters are raised in the present motion. Two of those matters, for the exclusion of evidence of Witness DBQ based on alleged late disclosure by the Prosecution, and for the production of judicial dossiers of Prosecution witnesses, have been resolved by decisions of 18 November and 17 December 2003, respectively. During a status conference on 17 December 2003, the Defence for Kabiligi withdrew a third request, for disclosure of two witness statements. The present decision addresses the last outstanding matter, a request for exclusion of evidence based on Rule 95.

2. The evidence in question is the anticipated testimony of Witness DBQ, as conveyed in written declarations taken from the witness not long before his appearance, known as “will-say” statements. Objections to the admission of the evidence based on the timeliness of disclosure were raised by the Defence and on 18 November 2003 the Chamber ruled that the evidence would not be excluded, but that testimony on the new matters would only be admitted after sufficient time had elapsed for adequate preparation by the Defence. The present motion also requests that the will-say testimony concerning the Accused Gratien Kabiligi be excluded on the basis of Rule 95 of the Rules of Procedure and Evidence, which provides that:

No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

SUBMISSIONS

3. The Defence for Kabiligi alleges that elements of will-say statements of Witness DBQ and other witnesses against the Accused have been incited or fabricated by the Prosecution. That allegation is based on alleged collusion between the Prosecution and co-Counsel to pressure the Accused to accept a plea agreement. The Defence requests

that the evidence in the will-say statements of Witness DBQ be excluded; in the alternative, that the Chamber open an inquiry into the matter; that the will-say statements of all future witnesses implicating the Accused be treated similarly; and that all will say statements from 9 September 2003 onward should be treated with the greatest caution and mistrust.

4. The Prosecution made no submissions.

DELIBERATIONS

5. The allegations of the Defence are speculative. The theory of the Defence is that the Prosecution actively incited Witness DBQ and other witnesses to make false declarations against the Accused. It is argued that co-Counsel gave a warning about incriminating evidence in will-say statements a day before one was communicated to the Defence. However, such will-say statements had previously been communicated, for example, on or about 30 June, 7 July, 6 August, and 1 September 2003. There is no evidence of a calculated plot by the Prosecution to fabricate evidence. Further, the only new element of Witness DBQ's testimony in the will-say statements is that the Accused arrived at a place where Tutsis had previously been killed. It is inconceivable that the Prosecution would hazard the serious misconduct alleged in order to present evidence of such limited significance.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 27 January 2004

Erik Møse	Jai Ram Reddy	Sergei Alekseevich Egorov
Presiding Judge	Judge	Judge

[Seal of the Tribunal]