



UNITED NATIONS
NATIONS UNIES

ICTR-01-76-1
24-02-2004
(1300 — 1298)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1300
S. Muzza

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse
Registrar: Adama Dieng
Date: 24 February 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-2001-76-I

2004 FEB 24 P 2:15
JUDICIAL RECORDS SECTION
ICTR

ORDER FOR TRANSFER OF WITNESSES (Rule 90 bis)

The Prosecutor

William T. Egbe
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

The Defence

Sadikou Ayo Alao
Francis Dako

8/6

1299

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, designated by the Chamber in accordance with Rule 73(A) of the Rules of Procedure and Evidence;

BEING SEIZED of the Prosecution’s “Request for an Order Transferring Detained Witnesses Pursuant to Rule 90 *Bis* of the Rules of Procedure and Evidence”, filed on 22 January 2004;

HEREBY DECIDES the motion.

1. Pursuant to Rule 90*bis* (A) of the Rules “[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Union of the Tribunal, conditional on his return within the period decided by the Tribunal”. Rule 90*bis* (B) requires prior verification of two conditions for such an order:

- (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

2. The Prosecution moves the Trial Chamber for an order authorizing the transfer of eight of its witnesses known by the pseudonyms KDD, KEC, KSD, XXG, YA, YC, YG, and YI, currently detained in Rwanda. In relation to the requirements of Rule 90*bis* (B), the motion includes as an annex a letter from the Prosecutor to an official of the Ministry of Justice of Rwanda which requests confirmation that the witnesses will not be subject to prosecution during the period 1 May and 30 June 2004. The motion itself, however, requests an order for the period from the end of March through the end of July 2004. Further, the letter does not request any assurance that the transfer will not extend the witness’s detention.

3. In the absence of any response from the government of Rwanda, the Prosecution made further *ex parte* submissions to the effect that it had received informal assurances that these witnesses would not be needed for any judicial proceedings in Rwanda between April and the end of June 2004, and that the transfer of the witnesses would not extend their detention.

4. The Chamber recalls that the Prosecution has the burden of providing specific information that the conditions in Rule 90*bis* (B) are fulfilled.¹ Though the information provided is less than ideal, the Chamber is satisfied, given the assurances of the Prosecution, that the conditions for an order under Rule 90*bis* (B) are met in relation to these witnesses.

FOR THE ABOVE REASONS, THE CHAMBER

ORDERS, pursuant to Rule 90*bis* of the Rules, that the individuals designated under the pseudonyms KDD, KEC, KSD, XXG, YA, YC, YG, and YI be transferred no earlier than 1 April 2004 to the Detention Unit in Arusha, and returned to Rwanda no later than the end of June 2004;

¹ *Ndindabahizi*, Order for Transfer of Witness CGC (Rule 90*bis*) (TC), 15 September 2003, para. 2.

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REQUESTS the Government of Rwanda to comply with this order and to arrange for the transfer in cooperation with the Registrar and the Tanzanian Government;

INSTRUCTS the Registrar to:

- A) Transmit this decision to the Governments of Rwanda and Tanzania;
- B) Ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;
- C) Remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change.

Arusha, 24 February 2004



Erik Møse
Judge

[Seal of the Tribunal]

