



ICTR-01-76-1
11-03-2004
(1312 - 1310)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1312
S. MUSA

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 11 March 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

2004 MAR 11 4 10:00
S. MUSA

**DECISION ON THE DEFENCE'S EXTREMELY URGENT MOTION FOR A
DEPOSITION**

Office of the Prosecutor

William T. Egbe
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

Counsel for the Defence

Sadikou Ayo Alao
Beth Lyons

Sh

1311

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 a Defence motion titled “Defence Extremely Urgent Motion to Take a Deposition, Rules 71 and 73 of the Rules”, filed on 7 January 2004;

CONSIDERING the Prosecution’s response, filed on 14 January 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused, dated 2 January 2002, was filed on 4 January 2002 and confirmed by Judge Winston C. Matanzima Maqutu on 8 January 2002.
2. On 28 November 2003, the Prosecution filed a “Request for Leave to Amend the Indictment of 4 January 2002”. On 15 January 2004, a status conference was held to discuss the progress of the case. The issue of the deposition of the testimony of an anticipated Defence witness residing in Paris, France, was among the issues discussed.
3. On 26 January 2004, the Trial Chamber rendered a decision granting the Prosecutor leave to file an Amended Indictment. It was subsequently filed on 27 January 2004.

SUBMISSIONS

4. The Defence seeks the deposition of the witness on the basis that he is in very bad health. A medical certificate dated 7 January 2004 from Dr. Philippe Bertaud states that the witness is in a state of health that prevents long travel. The Defence requests that the deposition take place in Paris before a Judge designated by the Tribunal or a French judge.
5. The Prosecution does not oppose the motion, but argues that the Defence has not shown exceptional circumstances warranting the deposition, and has not substantiated the claim of ill-health. Further, the Defence has not made a clear statement of the matters upon which examination of the witness is sought. If a deposition is granted, the Prosecution submits that a Presiding Officer from the Tribunal should be appointed.

DELIBERATIONS

6. Rule 71(A) provides the Chamber with the discretion to grant the taking of depositions where exceptional circumstances exist and where it would be in the interests of justice. In addition, Rule 71(B) stipulates certain requirements with which the request for deposition must comply: it must state the name and whereabouts of the witness, the date and place of deposition, a statement of matters for examination and of the exceptional circumstances justifying the deposition.

7. The rapidly deteriorating health of the witness, as attested to by Defence Counsel and the witness himself, constitutes, in the present case, an exceptional circumstance justifying the taking of a deposition.¹ It would have been preferable to have more details about the witness's condition. However, attempts by the Chamber to obtain further details have been unsuccessful, and the trial is scheduled to commence on 10 May 2004.

8. A second condition is that the motion should include "a statement of the matters on which the person is to be examined". In the motion, Defence Counsel states that the witness "has invaluable knowledge about the Rwanda tragedy" and would testify to "events that took place in Gikongoro *préfecture* during the Rwandan tragedy of 1994". During the Status Conference, Defence Counsel explained that the witness would testify to all the activities of the Accused as *conseiller* from 18 May to 17 July 1994.² The information provided is vague and not sufficiently precise so as to constitute a statement of the matters for examination. The other party, in deposition applications in particular, is entitled to know what the witness will testify to, given that deposition is an exceptional measure.


9. The Chamber is, however, prepared to reconsider the issue of deposition should the Defence provide the additional information required. In that event, the Chamber considers that it would appear more practical for the deposition to take place at the seat of the Appeals Chamber of the Tribunal in The Hague.³

10. An alternative solution could be to have the witness testify before the full Bench via video-link conference from The Hague.⁴ However, this option would imply that the witness could only be heard in the course of the trial.

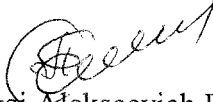
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 11 March 2004


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



¹ See eg. *Nahimana, Ngeze and Barayagwiza*, Decision on Defence Request to Hear the Evidence of Witness Y by Deposition (TC), 10 April 2003, para. 8; *Prosecutor v. Akayesu*, Decision on Prosecutor's Motion for Deposition of Witness OW (TC), 5 December 2001, para. 12.

² Transcript 15 January 2004, pp. 9-11.

³ See eg. *Nahimana, Ngeze and Barayagwiza*, Decision on the Second Motion to Reconsider the Scheduling Order Dated 26 March 2003 on the Testimony of Roger Shuy (TC), 10 April 2003, and Decision on the Defence Motion for the Deposition of the Testimony of Dr Ferdinand Goffioul (TC), 25 April 2003.

⁴ See eg. *Nahimana, Ngeze and Barayagwiza*, Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures (TC), 14 September 2001.