

ICTR-01-76-1
29-04-2004
(1481-1479)

1481
Ivan



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 28 April 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

2004 APR 29 A 9 36
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DECISION ON DEFENCE MOTION TO RESCHEDULE COMMENCEMENT OF TRIAL

Office of the Prosecutor:

William T. Egbé
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

Counsel for the Defence

Sadikou Ayo Alao
Beth Lyons

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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 “Urgent Defense Motion to Re-schedule Commencement of Trial, Based on the Untimely Disclosure by the Prosecutor’s Office, and the Tribunal’s Failure to Insure the Accused’s Rights Pursuant to Article 20 Statute (Article 73 RPP)”, filed on 19 April 2004; and the “Addition to Urgent Defence Motion”, filed on 20 April 2004;

CONSIDERING the “Prosecutor’s Response to Defence Motion”, filed on 22 April 2004; and the “Defence Reply to Prosecutor’s Response”, filed on 28 April 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused, dated 2 January 2002, was filed on 4 January 2002, and confirmed on 8 January 2002. An amended Indictment was subsequently filed on 16 February 2004. The Prosecution was ordered by a decision dated 4 March 2004 (“the decision”) to disclose identifying information of protected witnesses to the Defence no later than thirty days before the commencement of trial. The trial is scheduled to commence on 10 May 2004.

SUBMISSIONS

2. The Defence submits that the disclosure by the Prosecution of identifying information on 14 April 2004 was untimely based on the date of 10 May 2004 as the date of commencement of the trial. In addition, disclosure is inadequate as Co-Counsel has not been provided with a copy. The Defence further submits that disclosure via CD-ROM is not acceptable and hard copies should be provided, and argues that CD-ROMs pose a problem in ascertaining authenticity. The Defence submits that the result is that the Accused’s right to be represented by a fully prepared Defence team has been prejudiced.

3. The Prosecution objects to the motion and submits that it should be dismissed without costs. The Prosecution argues that disclosure took place on 6 April 2004, the date on which the Prosecution filed the CD-ROMs with the Registry for onward transmission to the Defence, and was therefore timely. The Prosecution also submits that its disclosure obligation relates to the Defence team, not to individual members of the team. Regarding disclosure in CD-ROM format, the Prosecution submits that it has been accepted by the Trial Chambers in other cases and by the Simba Defence team on prior occasions. On the issue of authenticity, the Prosecution submits that the hard copies are available for inspection by the Defence, and that authenticity issues should be raised only when the admission of the document into evidence is requested at trial. Finally, the Prosecution submits that no prejudice has been suffered by the Accused. The Defence maintains its position in its Reply.

DELIBERATIONS

4. The issue of timeliness of the disclosure by the Prosecution turns on whether the date of disclosure refers to the date on which the documents to be disclosed are dispatched by the Prosecution, or whether it refers to the date of receipt of the documents by the Defence. According to service records of the Registry, the CD-ROMs were dispatched by DHL from Arusha on 7 April 2004, and arrived at its destination of Cotonou on 13 April 2004 (see Annex I).

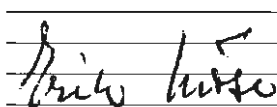
5. Both the Rules and the decision are silent as to the timing of service of documents for disclosure, and merely refer to “disclosure to the Defence”. The plain meaning of this phrase suggests that disclosure is only effected when the Defence receives the documents. Therefore, the relevant date of disclosure is the date of receipt of the documents, rather than the date on which the Prosecution sends the documents to the Registry for transmission to the Defence, that is, 13 April 2004. Taking into account the terms of the decision, the date for commencement of trial would be thirty days following disclosure, that is, 13 May 2004.

6. Neither the decision of 4 March 2004, nor Rule 66 relating to disclosure by the Prosecution, stipulates the form in which disclosure of redacted identifying material should be made. The Chamber notes that disclosure via CD-ROM has been accepted in other cases by the parties and considers such disclosure to be acceptable in the present case. Any issues relating to authenticity should be resolved via inspection by the Defence of the Prosecution’s documents, and after arguments at the stage of admission of the documents into evidence at trial. The Chamber further considers that disclosure is to be made to the Defence team as a whole, rather than individually to both Lead and Co-Counsel, or any other members of the team.

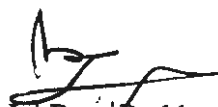
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion in part by deferring the commencement of trial to 13 May 2004.

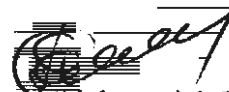
Arusha, 28 April 2004



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

(Seal of the Tribunal)