



UNITED NATIONS
NATIONS UNIES

JUR-96-8-T
08-05-2004
(473 — 470)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 6 May 2004

The PROSECUTOR

v.

Élie NDAYAMBAJE

Case No. ICTR-96-8-T

AD
JUDICIAL RECORDS
2004 MAY -6 P 5:22

**DECISION ON DEFENCE MOTION
REQUESTING THE RECALL OF WITNESS "QAR"
BASED ON THE DECISION OF THE APPEALS CHAMBER
IN THE MATTER OF PROCEEDINGS UNDER RULE 15BIS (D)**

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy Balungi Bossa (the "Chamber");

BEING SEISED of the "Defence Motion Requesting the Recall of Witness 'QAR' Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15bis(D)" (the "Motion"), filed on 19 December 2003;¹

CONSIDERING the "Prosecutor's Response to Ndayambaje's Motion Requesting for the Recall of Witness 'QAR' Based on the Decision of the Appeals Chamber in the Matter of Proceedings Under Rule 15bis(D)" (the "Response"), filed on 24 December 2003;

NOTING the "Decision in the Matter of Proceedings Under Rule 15 bis (D)" issued by Trial Chamber II on 15 July 2003 and the "Decision in the Matter of Proceedings Under Rule 15 bis (D)" (the "Appeals Chamber Decision") issued by a full bench of the Appeals Chamber on 24 September 2003;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the matter, pursuant to Rule 73 (B), on the basis of the written submissions of the Parties.

SUBMISSIONS OF THE PARTIES

Defence Motion

1. The Defence recalls that Witness QAR testified on 15, 19, 20 and 21 November 2001 before the Chamber composed of Judges Sekule, Ramaroson and Maqutu. As far as the Defence knows, there was no video record of her testimony that could permit Judge Bossa to examine her behaviour before the court.
2. The Defence submits that Witness QAR made three former written statements:
 - The first statement is dated 20 June 1995, and was made to officials of the Belgian government. The original is in Kinyarwanda. It wears the finger print of the Witness;
 - The second statement was made on 20 May 1997: Witness QAR acknowledges having made this statement at the IBIS Hotel in May 1997 (T. 20 November 2001, p. 32, lines 14-22); she said that her statement was not read to her because she had to leave (T. 20 November 2001, p. 35 line 17 to p. 36, line 4). But she further admitted that the statement had been read to her and that she was satisfied of it (T. 20 November 2001, p. 37 lines 2-23 and p. 43, line 2 to p. 46, line 25). She then stated that she had been forced to accept her written statement by the Inquirer (T. 20 November 2001, p. 48 lines 7-25). She then contested the substance of this statement;

¹ The Motion was filed in French and originally entitled: *Requête afin d'inviter la Chambre à rappeler le témoin QAR en vertu de la décision de la Chambre d'Appel intitulée : "Decision in the Matter of Proceedings Under Rule 15Bis(D)"*.



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- the third declaration is dated 14 October 1997 and was made at the Muganza communal office, in Remera;
 - Witness QAR then alleged she had been contacted by OTP in 2001 and reinterrogated. This last meeting would have taken place at the Witness' communal health center (T. 19/11/2001, p. 139, lines 4-11; 20/11/2001, p.10 line 10 to p. 11, line 1). However, the Defence never received this alleged fourth declaration in which she allegedly spoke about the events at Mugombwa Church in april 1994.
3. The Defence submits that Witness QAR's testimony is related to three events:
- The first took place around the 19-20/4/94 at Mugombwa Church: According to the Defence, the transcripts do not reflect the witness' tone when she accuses the Counsel of confusing the morning and 2.00 p.m. Furthermore, the Defence argues that the witness statement often lacked certainty, in particular on the issue of her knowledge of the persons using grenades in the church, her presence in the church on the first day, and the way she left the church. The Defence submits that Witness QAR most often explained the discrepancies with her former statements by the fact that she was obliged to sign it when it did not reflect her declarations.
 - The second is a meeting at the communal office at Remera at the end of June: the Defence underlines several discrepancies on the following issues: whether Ndayambaje would have answered a question by Nteziryayo concerning the fulfillment of a task ("to kill the snakes"); and whether Witness QAR was in a place that allowed her to see Ndayambaje during the meeting.
 - The third took place in the center of Mugombwa, next to a Statue of Mary on 20th June: the Defence submits that major discrepancies remained unexplained, with Witness QAR refusing to answer Counsel's questions.
4. Therefore, Ndayambaje prays the Chamber to recall Witness QAR to be heard on all these events.

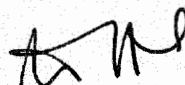
Prosecutor's Response

5. The Prosecutor submits that the issue of witness credibility was tested during cross-examination and does not need the Witness to be recalled.
6. The Prosecutor recalls that the substitute Judge, in reviewing the records and certifying, has indicated her familiarity with all the issues raised therein.
7. The Prosecutor submits that the defence failed to show in clear terms the points which will need to be assessed by the substitute Judge because they have not been adequately reflected in the records of proceedings as they presently stand.
8. Therefore, the Prosecution prays the Chamber to dismiss the Motion.

DELIBERATION

9. The Trial Chamber recalls the Appeals Chamber Decision:²

² Para. 35 of the Appeals Chamber Decision.



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"[i]f the Judge assigned by the President certifies 'that he or she has familiarized himself or herself with the record of the proceedings' (which, as mentioned above, does not in this case include video-recordings) and thereafter accordingly joins the bench of the Trial Chamber, the recomposed Trial Chamber may, on a motion by a Party or *proprio motu*, recall a witness on a particular issue which in the view of the Trial Chamber involves a matter of credibility which the substitute judge may need to assess in the light of the witness's demeanour."

10. Accordingly, for a witness to be recalled, the moving Party shall identify a particular issue which involves a matter of credibility which the substitute judge may need to assess in the light of the witness' demeanour. The witness may then be recalled to be heard again on this specific issue.
11. Other issues of credibility, related to the substance of the evidence, do not justify the recall of witnesses. Such issues would have already been addressed by the Defence during the cross-examination of the witness and can be raised again at the end of the proceedings, in particular in the closing arguments.
12. The issues of credibility raised in the current Motion are related to the substance of the evidence, which may be relevant in the closing arguments. The Defence does not raise any specific issue which in the view of the Trial Chamber involves a matter of credibility which the substitute judge may need to assess in the light of the witness' demeanour.

FOR THE ABOVE REASONS,


THE TRIAL CHAMBER

DENIES the Motion in its entirety.

Arusha, 6 May 2004



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

