



ICTR-01-76-I
14-07-2004
(2590-2588)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2590
S. Munda

OR: ENG

TRIAL CHAMBER I

Before: Judge Jai Ram Reddy, presiding
Judge Sergei Alekseevich Egorov
Judge Emile Short

Registrar: Adama Dieng

Date: 14 July 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

2004 JUL 14 P 3 11
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DECISION ON PROSECUTOR'S MOTION FOR ADMISSION OF TESTIMONY OF
AN EXPERT WITNESS

Office of the Prosecutor

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[Handwritten initials]

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

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

BEING SEIZED OF the “Prosecutor’s Motion for Admission of Testimony of an Expert Witness”, filed on 5 April 2004;

NOTING that to date the Defence has not responded to the motion and the five-day deadline for responses, pursuant to Rule 73(E), has passed;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused was confirmed on 8 January 2002. The amended Indictment was filed on 27 January 2004, the second amended Indictment was filed on 10 May 2004, and the trial is scheduled to commence on 16 August 2004. On 26 May 2004, the Defence filed a motion for the disqualification of expert witness Alison Des Forges and the exclusion of her report.

SUBMISSIONS

2. The Prosecution seeks to admit into evidence the exhibits and transcript of the testimony of Alison des Forges in *Prosecutor v. Akayesu*, pursuant to Rules 54, 73 and 92bis(D) and (E), which qualify as proof of a matter other than the acts and conduct of the Accused. This would save judicial time and is in the interests of justice, and the Prosecution undertakes to make the witness available for cross-examination.

DELIBERATIONS

3. Rules 54 and 73(A) allow the Chamber to issue orders when appropriate. Rule 92bis provides for the admission of written statements or transcripts in lieu of oral testimony where the evidence goes to proof of a matter other than the acts and conduct of the Accused as charged. Rule 92bis(D) and (E) provide as follows:

(D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.

(E) Subject to any order of the Trial Chamber to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

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4. Rule 92bis does not expressly exclude the possibility of its applicability to expert, as well as factual, witnesses; reference is made merely to "a witness". Although the qualification of a witness as an expert is usually preceded by a *voir dire*, the Chamber notes that Rule 92bis was used in *Prosecutor v. Gacumbitsi* to admit the transcripts of the testimony of Alison Des Forges in *Akayesu*. However, both *Akayesu* and *Gacumbitsi* were *bourgmestres* and a substantial part of the witness's testimony in *Akayesu* dealt with the powers and role of a *bourgmestre*, which would not be relevant in this case.

5. Motions under Rule 92bis must also satisfy the test of relevance and probative value set out in Rule 89(C).¹ The Accused, Simba, is mentioned in the transcripts in one passing reference, merely as an example of the collaboration between the military, civilian and political spheres:

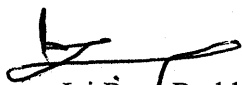
In fact, it's remarkable the extent to which the civilian administration continues to function, in the areas that I have examined, in any case. But, for example, I have been told that in the prefecture of Gikongoro, that when the prefect called a meeting of the – the prefectural security council, that he shared precedence over the session with Colonel Asimba (phonetic spelling), a military figure, retired military, but still in -- a very important military leader. And I think that that's not an inaccurate symbol for the kind of collaboration that I would see here. In fact, the remarkable -- one of the remarkable characteristics is the extent of collaboration between military, civilian and political. And it is this very collaboration which allows the reaching out to encompass such a significant part of the population.²

6. It is difficult to see how the testimony would be relevant in this case, and the Prosecution has not explained why it wishes to adduce this evidence, which was given seven years ago. The Chamber is not convinced that, in a case of this nature involving a single Accused, the broad historical evidence offered by Alison des Forges has any value in the proving of the charges against the Accused. Therefore, the evidence does not satisfy the criteria of Rule 89(C) for admission.

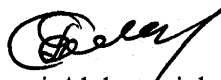
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

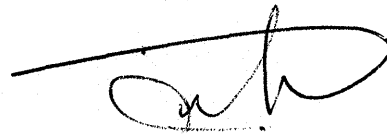
Arusha, 14 July 2004



Jai Ram Reddy
Presiding Judge



Sergei Alekseevich Egorov
Judge



Emile Short
Judge

(Seal of the Tribunal)



¹ *Bagosora*, Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis (TC), 9 March 2004, para. 12.

² *Akayesu*, Transcript of 18 February 1997, p. 14.

