



ICTR-95-1B-T
19-8-2004
(1305-1303)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Or: ENG

TRIAL CHAMBER III

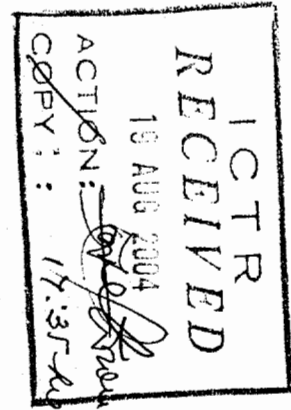
Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 19 August 2004

The PROSECUTOR
v.
Mika MUHIMANA

Case No. ICTR-95-1B-T



**DECISION ON DEFENCE MOTION FOR TRANSFER OF DETAINED
WITNESSES**

Office of the Prosecutor:

Mr. Charles Adeogun-Phillips
Mr. Wallace Kapaya
Mr. Peter Tafah
Ms. Renifa Madenga
Ms. Florida Kabasinga
Ms. Maymuchka Lauriston

Counsel for the Defence:

Professor Nyabirungu Mwene Songa
Mr. Kazadi Kabimba

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

SITTING as Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga and Judge Emile Francis Short, (the “Trial Chamber”);

BEING SEIZED of the “Requête de la Défense en transfert de témoins détenus”, filed on 18 August 2004, (the “Motion”);

NOTING that the Prosecutor has not yet filed any response;

CONSIDERING the urgency of this motion and its procedural nature, the Trial Chamber deems it appropriate to decide this matter expeditiously, and to this extent considers it appropriate to proceed despite the short notice given to the Prosecution for a response;

CONSIDERING that Rule 90*bis* (A) of the Rules of the rules of Procedure and Evidence reads as follows:

[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.

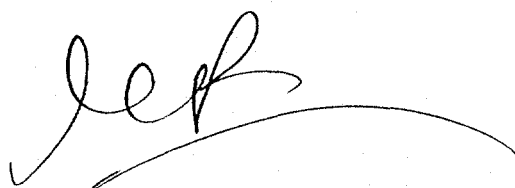
CONSIDERING that Rule 90*bis* (B) requires prior verification of two conditions for such an order:

- (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.

CONSIDERING that, the Defence requests an order from the Chamber authorizing the transfer, for a period not exceeding one month, of the following Defence witnesses: DF, DG, DH, DI, DJ, DK, DL, DR, DS, DT, DU, DW, DY, DZ, and DAA;

CONSIDERING FURTHER that the above mentioned witnesses are currently detained in the Republic of Rwanda and that the Defence has filed a letter dated 18 July 2004 from the Ministry of Justice of Rwanda, addressed to the Registrar of the Tribunal, authorizing the detainees in question to be transferred to the seat of the Tribunal;

CONSIDERING that, the Chamber is satisfied that the conditions for an order under Rule 90*bis* (B) have been met in relation to these witnesses;



FOR THE ABOVE REASONS, THE CHAMBER

ORDERS that the persons designated by the Defence as Witnesses DF, DG, DH, DI, DJ, DK, DL, DR, DS, DT, DU, DW, DY, DZ, and DAA be transferred to the United Nations Detention Facility in Arusha as soon as possible for a period not to exceed one month;

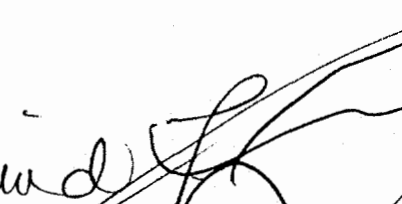
REQUESTS the Government of the Republic of Rwanda to comply with this order and to arrange for the transfer in cooperation with the Registrar and the Government of United Republic of Tanzania;

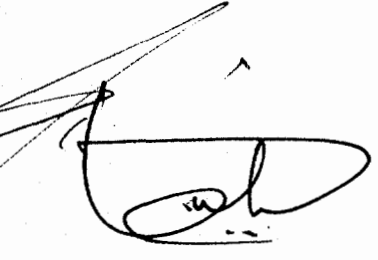
INSTRUCTS the Registrar to:

- A) Transmit this decision to the Government of the Republic of Rwanda and Government of the United Republic of Tanzania;
- B) Ensure the proper conduct of the transfer, including the supervision of the witness in the United Nations Detention Facility in Arusha;
- C) Remain seized of any change 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, 19 August 2004


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Emile Francis Short
Judge