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ICTR-01-76-I
01-09-2004
(2848 - 2846)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2848
S. MUSA

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Dennis C. M. Byron

Registrar: Adama Dieng

Date: 31 August 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

JUDICIAL RECORDS/ARCHIVES
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ICTR
2004 SEP - 1 A 9 32

DECISION ON THE DEFENCE MOTION TO PRECLUDE PROSECUTION EVIDENCE

Office of the Prosecutor:

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Sergei Alekseevich Egorov, and Judge Dennis C. M. Byron;

BEING SEIZED OF the “Defence Motion In Limine to Preclude Prosecution Evidence for Allegations which Are Outside the Temporal Jurisdiction of the Tribunal”, filed on 27 August 2004;

CONSIDERING the Prosecution’s response, filed on 27 August 2004;

HEREBY DECIDES the motion.

1. The Defence motion requests the Trial Chamber to preclude the Prosecution from introducing testimonial and documentary evidence concerning allegations in the Indictment which are outside the temporal jurisdiction of the Tribunal. The Defence asserts that the Prosecution’s anticipated pre-1994 evidence are allegations of crimes outside the Tribunal’s temporal jurisdiction, and not simply historical background or context. It also argues that the vagueness and imprecision of the pre-1994 allegations further prejudice the Accused.
2. In its response, the Prosecution argues that the motion is pre-mature as no evidence has yet been led. It further notes the Tribunal’s practice of admitting pre-1994 evidence in order to provide context to the alleged crimes.
3. Previous cases confirm that there are three bases of relevance for pre-1994 evidence, which are exceptions to the general inadmissibility of pre-1994 evidence: (i) evidence relevant to an offence continuing into 1994; (ii) evidence providing a context or background; and (iii) similar fact evidence.¹ The Chamber held recently in this case that the paragraphs in the Indictment alleging events occurring prior to 1994 provide a context or background and may be a basis on which to draw inferences as to intent or other elements of the crimes alleged to have been committed within the Tribunal’s temporal jurisdiction.² This decision was affirmed by the Appeals Chamber.³ Therefore, the Chamber does not consider allegations of pre-1994 events, or evidence to be lead in support of these allegations, to be separate crimes for which the accused

¹ *Simba*, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004, para. 7. See also *Simba*, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC), 29 July 2004; *Ntahobali and Nyiramasuhuko*, Decision On The Appeals By Pauline Nyiramasuhuko And Arsène Shalom Ntahobali On The “Decision On Defence Urgent Motion To Declare Parts Of The Evidence Of Witnesses RY And QBZ Inadmissible” (AC), 2 July 2004, paras. 15-16; *Bagosora et al*, Decision on Prosecutor’s Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003; *Ngeze and Nahimana*, Décision sur les appels interlocutoires (AC), Separate Opinion of Judge Shahabuddeen, 5 September 2000; *Bagosora et al*, Decision on the Admissibility of Proposed Witness DBY (TC), 18 September 2003, paras. 9-14; *Nahimana et al*, Judgement (TC), 3 December 2003, para. 101; *Nahimana*, Decision on the Defence Preliminary Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence (TC), 12 July 2000, p. 4.

² *Simba*, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004, para. 8.

³ *Simba*, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC), 29 July 2004.

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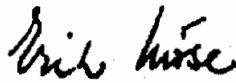
could be potentially held criminally liable, as argued by the Defence. Consistent with the approach adopted by both the Appeals Chamber and this Trial Chamber, it will be for the Trial Chamber during the trial to decide whether to admit evidence relating to events falling outside the temporal jurisdiction of the Tribunal in accordance with Rule 89(C).⁴

4. The Chamber has already ruled on issues of vagueness and imprecision in the Indictment and will not consider it again here.⁵

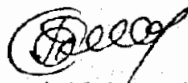
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence motion in all respects.

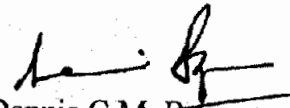
Arusha, 31 August 2004



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



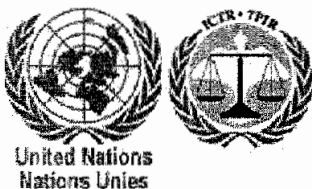
Dennis C.M. Byron
Judge

(Seal of the Tribunal)



⁴ *Simba*, Decision on Interlocutory Appeal Regarding Temporal Jurisdiction (AC), 29 July 2004. See also *Bagosora et al*, Decision on the Admissibility of Proposed Witness DBY (TC), 18 September 2003, paras. 6, 7; *Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 2 July 2004, para. 15; *Bagosora et al*, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence (AC), 19 December 2003; *Ngeze and Nahimana*, Décision sur les appels interlocutoires (AC), Separate Opinion of Judge Shahabuddeen, 5 September 2000, para. 40. See also *Nahimana*, Decision on the Defence Preliminary Motion, Pursuant to Rule 72 of the Rules of Procedure and Evidence (TC), 12 July 2000, p. 4.

⁵ *Simba*, Decision on Preliminary Defence Motion Regarding Defects in the Form of the Indictment (TC), 6 May 2004, paras. 4-5.



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Dates:	Transmitted: 1 September 2004		Document's date: 31 August 2004	
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