



ICTR-96-8-T
03.09.2004
(480-482)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

482
Mwaja

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 3 September 2004

JUDICIAL RECORDS/ARCHIVES
RECEIVED
ICTR
2004 SEP 13 P 3 25

The Prosecutor

v.

Elie NDAYAMBAJE (Case No. ICTR-96-8-T)

**DECISION ON ELIE NDAYAMBAJE'S REQUEST FOR THE CHAMBER TO
ORDER THE REMOVAL OF SEALS ON PARTS OF THE TESTIMONY OF
PROSECUTION WITNESS FAG**

Office of the Prosecutor

Ms. Sylvana Arbia
Mr. Jonathan Moses
Ms. Adesola Adebeyejo
Ms. Adelaide Whest
Mr. Michael Adenuga
Mr. Manuel Bouwknecht

Counsel for Ndayambaje

Mr. Pierre Boulé
Mrs. Claude Desrochers
Mr. Frédéric Palardy

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

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

BEING SEIZED of the "*Requête afin d'ordonner au Greffier la levée des scellés des portions du témoignage du témoin FAG en date du 1er mars 2004 (pages 48 à 51 de la version française des notes sténographiques) et de transférer ces dites portions dans les notes sténographiques à huis clos,*" filed on 31 August 2004;

WHEREAS the Defence seeks to prepare itself for a further cross-examination of Prosecution Witness FAG to be conducted on 6 September 2004, it requests the Chamber to order (1) the unsealing of the sealed portions of the testimony made by said witness on 1 March 2004; and (2) that the said unsealed portions be transferred into the closed session testimony of the said witness;

CONSIDERING the "Prosecutor's Reply to Elie Ndayambaje's *Requête afin d'ordonner au Greffier la levée des scellés des portions du témoignage du témoin FAG en date du 1er mars 2004 (pages 48 à 51 de la version française des notes sténographiques) et de transférer ces dites portions dans les notes sténographiques à huis clos,*" filed on 2 September 2004;

WHEREAS the Prosecution took cognizance of the provisions of Rules 75 and 79 and observed that "there is no contention that the evidence of FAG referred to in the defence motion is such that it could potentially lead to the identification of FAG, a protected witness, as reference is made to the names of persons and various locations." The Prosecution submitted that it does not object to the Motion that those portions of the transcripts of the evidence of witness FAG on 1 March 2004 at pages 48 to 51 of the French version, from the sealed category to the closed session category.

HAVING DELIBERATED

RECALLING that on 6 September 2004 a further cross-examination of Prosecution Witness FAG is scheduled to take place following the Chamber's Decision of 18 June 2004¹;

WHEREAS in order to further cross-examine Prosecution Witness FAG, the Chamber understands that it is necessary for the Defence to review the transcripts of the entire testimony made by said witness on 1, 2 and 3 March 2004;

WHEREAS the Chamber finds that in order for the Defence to prepare itself, it is necessary to unseal any portions of the testimony of Prosecution Witness FAG that were put under seal when the witness was testifying;

WHEREAS the Chamber notes in the French transcripts of 1 March 2004, there are indeed references to orders for sealing some portions at pages 48 to 51 as indicated by the Defence. On the other hand, the Chamber notes that the English portions of the transcripts of the same date and the same testimony do not contain any references to orders for sealing some portions of the transcript and this part of the evidence appears to have been heard in open session;

¹ *Prosecutor v. Ndayambaje* (ICTR-96-8-T) Decision on Elie Ndayambaje's and Alphonse Nteziryayo's Request for the Recall of Witness FAG following the Disclosure of a new Confessional statement," of 18 June 2004

WHEREAS the Chamber finds it warranted that the Defence is enabled to prepare itself by reviewing the French transcripts of the testimony of witness FAG made at pages 48 to 51 on 1 March 2004;

WHEREAS the Chamber is mindful of the need to ensure that the protective orders made in respect of Prosecution Witness FAG are preserved. Consequently, Chamber orders the Registry to immediately unseal those portions of pages 48 to 51 of the French transcripts of the testimony of witness FAG of 1 March 2004 and then to place the same into the closed session transcripts of the testimony of witness FAG and to immediately provide the Defence with the same;

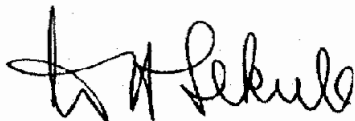
WHEREAS the Chamber further orders the Registry to examine the English and French transcripts for any references to orders made during the testimony of witness FAG on 1 March 2004 and report to the Trial Chamber for any possible orders to reconcile the said records.

FOR THE ABOVE REASONS, THE TRIBUNAL


GRANTS the Motion; and

1. **ORDERS** the Registry to immediately unseal those portions of pages 48 to 51 of the French transcripts of the testimony of witness FAG of 1 March 2004 and then to place the same into the closed session transcripts of the testimony of witness FAG and to immediately provide the Defence with the same;
2. **ORDERS** the Registry to examine the English and French transcripts for any references to orders made during the testimony of witness FAG on 1 March 2004 and report to the Trial Chamber for any possible orders to reconcile the said records.

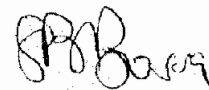
Arusha, 3 September 2004



William H. Sekule
Judge



Arlette Ramarason
Judge



Solomy Balungi Bossa
Judge

