

ICTR-01-76-T
28-10-2004
(2980 - 2978)



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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S. Muser

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 28 October 2004

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

JUDICIAL RECORDS/ARCHIVES
ICTR
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**DECISION ON THE DEFENCE REQUEST FOR THE COOPERATION OF RWANDAN
GOVERNMENT PURSUANT TO ARTICLE 28**

Office of the Prosecutor:

Richard Karegyesa
William T. Egbe
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

Counsel for the Defence

Sadikou Ayo Alao
Beth Lyons

[Handwritten initials]

2979

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

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

BEING SEIZED OF the “Requête Urgente de la Défense en Vue d’Ordonner à l’Etat Rwandais Communication de l’Entier Dossier Judiciaire du Témoin KDD”, filed on 27 October 2004;

HAVING HEARD the parties on 27 October 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence seeks the entire judicial dossier of Prosecution Witness KDD. According to the parties, the witness is a detained witness who has been condemned to death in Rwanda. The Chamber has previously ordered the Prosecution to request the judicial records of its detained witnesses from the Rwandan authorities. The Prosecution disclosed the records it obtained to the Defence on 3 August and 1 September 2004. Two of these documents related to Witness KDD have been translated from Kinyarwanda into French and provided to the Defence, including a Pro Justitia statement dated 17 August 2001 and the record of the witness’s guilty plea dated 26 January 2001.

SUBMISSIONS

2. The Defence argues that it does not have any documentation relating to Witness KDD’s death sentence, which prevents the full appreciation of the witnesses testimony. The Defence indicated without further detail that it explained its various efforts to obtain these documents during the status conference of 13 May 2004. The Defence indicated that the witnesses testimony should be postponed until these records are obtained.

3. The Prosecution states that it has complied the Chamber’s order to request judicial records of its witnesses from the Rwandan authorities and that all the judicial records it received from them were disclosed to the Defence. The Defence has not adequately demonstrated that it has made its own good faith efforts to obtain the documents prior to making its request.

DELIBERATIONS

4. The Chamber has previously recognized that Rwandan judicial records are important for the preparations of the Defence given their relevance to credibility.¹ The Chamber recently stated in this case:

¹ See, e.g., *Simba*, Decision on Defence Motion to Obtain Judicial Records Pursuant To Rule 68 (TC), 4 October 2004, para. 8; *Bagosora et al.*, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses (TC), 16 December 2003, para. 7; *Bagilishema*, Decision on the

As is the general practice in the Tribunal, the Defence must first make its own independent efforts to secure evidence it wishes to use at trial other than exculpatory material in the possession of the Prosecution. Once the Defence demonstrates its inability to obtain relevant material despite its good faith efforts, it may then seize the Chamber and request appropriate judicial assistance pursuant to Article 28 of the Statute.²

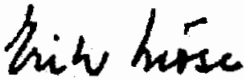
5. The Chamber has reviewed the transcript from the 13 May 2003 status conference, which documents only the Defence's need for judicial documents, not their efforts to obtain them. Consequently, in the Chamber's view, the Defence has not adequately demonstrated the efforts that it has undertaken to obtain the requested documents. Absent such a showing, the Defence's request for cooperation is premature.

6. The request for the adjournment of the testimony of the witness until the Defence obtains the full judicial dossier is also denied. The Defence may draw the Chamber's attention to inconsistencies between the testimony of the witness before this Chamber and any declaration or record obtained subsequently.³ If prejudice can be shown from its inability to put these inconsistencies to the witness, the Defence may submit a motion for his recall.

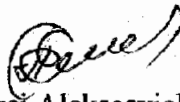
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence's motion.

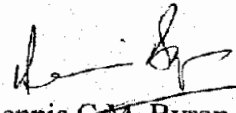
Arusha, 28 October 2004



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Dennis C.M. Byron
Judge

(Seal of the Tribunal)



Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witness Y, Z, and AA (TC), 8 June 2000, paras. 10-11.

² *Simba*, Decision on Defence Motion to Obtain Judicial Records Pursuant To Rule 68 (TC), 4 October 2004, para. 11 (internal citation omitted).

³ *Bagosora et al.*, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses (TC), 17 December 2004, para. 8.

