

ICTR-01-76-T  
28-10-2004  
(2986-2985)



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

2986

S. Mussa

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

JUDICIAL RECORDS ARCHIVES  
ICTR  
2004 OCT 28 A 11: 05

**THE PROSECUTOR**

v.

**Aloys SIMBA**

*Case No. ICTR-01-76-T*

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**DECISION ON THE DEFENCE REQUEST TO PRECLUDE THE TESTIMONY OF  
PROSECUTION WITNESS KDD UNDER OATH**

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**Office of the Prosecutor:**

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

**Counsel for the Defence**

Sadikou Ayo Alao  
Beth Lyons

26m

**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 de Déclarer Irrecevable le Témoignage sous Serment de Témoin KDD et sur la Valeur Probante de son Témoignage”, filed on 25 October 2004;

**HAVING HEARD** the parties on 27 October 2004;

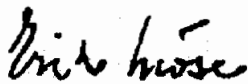
**HEREBY DECIDES** the motion.

1. The Defence seeks to preclude the taking of the anticipated testimony of Prosecution Witness KDD under oath. At any rate, the witness’s testimony should only be considered for informative purposes, and not accorded any probative value. The witness has been condemned to death, thus depriving him under Rwandan law of his civil rights including his ability to testify to an accused’s acts. According to the Defence, under Rwandan law, the witness’s testimony could only be given without an oath and considered as simple information.
2. The Prosecution prays that the Defence motion be dismissed in its entirety.
3. The Chamber recalls that according to Rule 89 (A) the Tribunal is not bound by national rules of evidence. The witness’s legal status in Rwanda in no way impacts his capacity to testify or the manner in which he would give evidence before this Tribunal.<sup>1</sup> The Chamber is also unwilling to pre-judge the credibility and reliability of a witness’s anticipated testimony.<sup>2</sup>

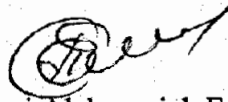
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence’s motion.

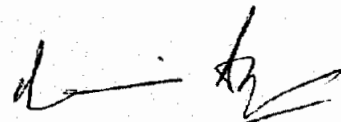
Arusha, 28 October 2004



Erik Møse  
Presiding Judge



Sergei Alekseevich Egorov  
Judge

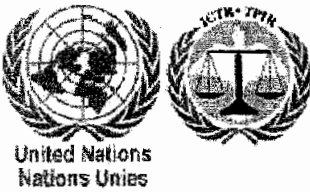


Dennis C.M. Byron  
Judge



<sup>1</sup> *Gacumbitsi*, Judgement (TC), 17 June 2004, para. 67.

<sup>2</sup> *Bagosora et al.*, Decision on the Defence Motion to Preclude Portions of the Anticipated Testimony of Prosecution Witness DCH, for the Postponement of Witness DCH’s Testimony, and for the Appointment of Defence Counsel for DCH (TC), 29 March 2004, para. 9.



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**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

## I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input checked="" type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS K. K. A. Afande	<input type="checkbox"/> Appeals Chamber / The Hague R. Burriss
<b>From:</b>	<input checked="" type="checkbox"/> Chamber I <b>Judges Møse, Egorov, Byron</b> (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. Simba		<b>Case Number:</b> ICTR-01-76-I	
<b>Dates:</b>	Transmitted: 28 October 2004		Document's date: 28 October 2004	
<b>No. of Pages:</b>	2	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
<b>Title of Document:</b>	DECISION ON THE DEFENCE Request to Preclude the Testimony of Prosecution Witness KDD Under Oath			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input checked="" type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties	<input type="checkbox"/> Submission from parties	
		<input type="checkbox"/> Accused particulars		

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## III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date:
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<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: