

ICTR-01-76-T  
10-11-2004  
(3062-3060)

3062  
Ivan



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER I**

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

**Registrar:** Adama Dieng

**Date:** 10 November 2004

**THE PROSECUTOR**

v.

**Aloys SIMBA**

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

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2004 NOV 10 A 9 20  
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**DECISION ON DEFENCE REQUEST FOR INFORMATION RELATED TO  
WITNESSES YH AND KXX**

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**Office of the Prosecutor:**

Richard Karegyesa  
Sulaiman Khan  
Ignacio Tredici  
Amina Ibrahim

**Counsel for the Defence**

Sadikou Ayo Alao  
Beth Lyons

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**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 de la defense en vue d’enjoindre au procureur d’avoir à fournir la preuve que des poursuites judiciaires ont été engagées contre les témoins “KXX” et “YH” lesquels se sont accusés du crime de génocide”, filed on 25 October 2004;

**CONSIDERING** the Prosecution’s response, filed on 28 October 2004;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. At the close of Witness YH’s evidence on 23 September 2004, the Defence made an oral motion requesting the Prosecution to investigate the witness in relation to alleged discrepancies between his statement about his criminal activity before the Tribunal and what he had confessed to in Rwanda. The Chamber denied the motion emphasizing the Prosecution’s independence in deciding which cases to investigate and prosecute.<sup>1</sup> After the evidence of Witness KXX on 24 September 2004, the Defence made a similar request.<sup>2</sup>

**SUBMISSIONS**

2. The Defence motion seeks a report within one month concerning whether prosecutions are underway against Witnesses YH and KXX based on their allegedly self-incriminating testimony that was not mentioned in their previously disclosed statements to ICTR investigators. The Defence supports its motion by reference to Rule 90 (E) and Articles 13 (4) and 14 (1) of the Code of Conduct for Defense Counsel.

3. The Prosecution asserts that the Defence motion lacks any basis in the Statute or Rules and should be dismissed as frivolous. The response emphasises the Prosecution’s independence and discretion under the Statute to determine when to institute criminal proceedings. The Prosecution would breach the Chamber’s witness protection order by disclosing much of the allegedly self-incriminating evidence highlighted by the Defence because it was given during closed sessions.

**DELIBERATIONS**

4. It is recalled that on 23 September 2004, the Chamber denied the Defence motion requesting the Chamber to direct investigation in relation to Witness YH. The Chamber’s position is the same in relation to Witness KXX. Alleged discrepancies between prior statements to investigators and the testimony of these witnesses will be considered on the merits after having heard the totality of the evidence.

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<sup>1</sup> T. 23 September 2004 p. 29.

<sup>2</sup> T. 24 September 2004 p. 60.

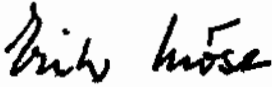
*Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T

5. In its present motion, the Defence seeks a report on the state of the Prosecution's investigations concerning Witnesses YH and KXX. It follows from the Prosecution's response that it has not initiated any proceedings and has no intention to do so. According to Article 15 (2) of the Statute, the Prosecutor shall act independently as a separate organ of the Tribunal. He shall not receive instructions from any source. Under Article 17, the Prosecutor has the power to initiate investigations and assess whether the information forms a sufficient basis to proceed. There is no basis for the Defence motion.

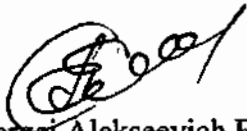
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence motion.

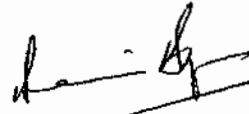
Arusha, 10 November 2004



Erik Møse  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Dennis C.M. Byron  
Judge

(Seal of the Tribunal)

