

ICTR-01-76-T  
3214-3212  
25-01-2005

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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:** 25 January 2005

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

JUDICIAL RECORDS/ARCHIVES  
ICTR  
2005 JAN 25 4:10:55  
[Signature]

DECISION ON THE ADMISSION OF A WRITTEN STATEMENT

**Office of the Prosecutor:**

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**Counsel for the Defence**

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Beth Lyons

Bh

**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 “Defence Motion for the Admissibility of Statement of Defence Alibi Witness”, filed on 9 November 2004;

**CONSIDERING** the Prosecution’s response, filed on 17 November 2004, and the Defence’s reply, filed on 28 November 2004;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Defence requests the admission of a written statement in support of the Accused’s alibi from an individual who has expressed reluctance to testify. In the statement, the individual states that she did not see the Accused during the massacre at Kaduha parish. The statement was previously submitted to the Chamber in support of a request for a deposition of that individual, which was denied for lack of exceptional circumstances.<sup>1</sup> A subsequent Defence request to subpoena this individual to appear as a witness is pending before the Chamber.

**SUBMISSIONS**

2. According to the Defence, the statement meets the criteria for admissibility under Rule 89 because it supports the Accused’s alibi that he was not present at Kaduha parish and because the contents of the statement were affirmed by the investigator before a Tanzanian notary. The Defence also notes that, in Tribunal jurisprudence, the threshold for admissibility is lower than that required in the final determination. Rule 92 *bis* is not applicable because the statement discusses the events at Kaduha, and not the acts of the Accused.

3. The Prosecution argues that the statement should not be admitted because it does not comply with Rule 92 *bis*. The statement further lacks probative value because it is not a positive assertion of where the Accused was at the time of the events. The Prosecution also questions the reliability of the statement on a number of grounds.

**DELIBERATIONS**

4. Rule 89 (C) allows the Chamber to admit any relevant evidence which has probative value. However, the Chamber’s broad discretion under this rule is limited by Rule 90 (A) which provides that witnesses shall in principle be heard directly by the Chamber unless a deposition has been ordered under Rule 71. Rule 92 *bis* provides the sole avenue for the admission of written statements in lieu of oral testimony intended for the proof of facts.<sup>2</sup>

<sup>1</sup> *Simba*, Decision on Extremely Urgent Defence Motion for the Deposition of Alibi Witnesses (TC), 14 June 2004, para. 9.

<sup>2</sup> *Bagosora et al.*, Decision on Admission of Statements of Deceased Witnesses (TC), 19 January 2005, para. 15.

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

5. Rule 92 *bis* requires that the evidence go to proof of a matter other than the acts and conduct of the accused as charged in the indictment, and that the statement be accompanied by a duly witnessed declaration by the person making the statement that the contents are true and correct. The statement proposed for admission does not conform with these threshold requirements. The Defence seeks to use it to support the Accused alibi that he was not present at Kaduha parish. This goes directly to proof of the acts or conduct of the Accused, by corroborating to some extent his alibi. In addition, the statement does not contain an authenticated declaration by the witness affirming the truth of the contents. Consequently, the motion must be denied.

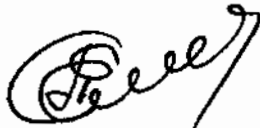
**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence motion.

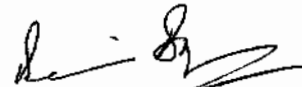
Arusha, 25 January 2005



Erik Møse  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Dennis C.M. Byron  
Judge

(Seal of the Tribunal)

