

ICTR-01-76-T
04-02-2005
(3231 - 3228)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

S. MUSA

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 4 February 2005

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

JUDICIAL RECORDS/ARCHIVES
ICTR
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[Signature]

**DECISION AUTHORIZING THE TAKING OF THE EVIDENCE OF WITNESSES
IMG, ISG, AND BJK1 BY VIDEO-LINK**

Office of the Prosecutor:

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Counsel for the Defence

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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 “Defence Motion for Subpoena for Potential Defence Witnesses”, filed on 7 January 2005; and “Defence Motion for Subpoena for Defence Witness BJK1”, filed on 7 January 2005;

NOTING that the Prosecution has not filed any response.

HEREBY DECIDES the motions.

INTRODUCTION

1. The Defence requests the Chamber to issue three subpoenas to Witnesses BJK1, IMG, and ISG in order to obtain their testimony during the upcoming trial segment from 14 February until 30 March 2005. The Chamber has addressed these requests in a single decision given the similarity of the legal issues presented and the relief granted.

SUBMISSIONS

2. The Defence asserts that the testimony of Witnesses IMG, ISG, and BJK1 is relevant to the case, but that they are reluctant to come to Arusha to testify. As documented in its motion, the Defence has made efforts seeking Witnesses IMG and ISG’s voluntary cooperation. These have not proven successful. Based on its contact with these witnesses, the Defence has concluded that they will testify only under circumstances where each is discreetly called as a witness of the Tribunal and referred to by the Defence as “institutional witnesses”. Witness BJK1 was originally scheduled to testify during the first trial segment of the Defence case from 13 December to 17 December 2004. However, the witness at the last minute refused to accompany the representative of the Tribunal’s Witness and Victims Support Section (WVSS) to come to Arusha because he had received death threats.

DELIBERATIONS

3. The Defence seeks the issuance of subpoenas for Witnesses IMG and ISG to testify, if possible, in a closed session by video-link from Kigali.¹ The subpoena request for Witness BJK1 does not specifically mention the use of video-link, but it does ask the Chamber to take whatever additional measures may be necessary to enable the witness to safely and securely comply with the Tribunal’s subpoena.

¹ The Chamber has previously denied a request for taking the depositions of Witnesses ISG and IMG due to their security concerns. *Simba*, Decision on Extremely Urgent Defence Motion for the Deposition of Alibi Witnesses (TC), 14 June 2004, para. 9. The Chamber has also denied a request to admit Witness ISG’s written statement. See *Simba*, Decision on the Admission of a Written Statement (TC), 25 January 2005.

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4. Video transmission of testimony has been authorized in this Tribunal on some occasions. Video-link testimony may be allowed for witness protection purposes under Rule 75 of the Rules of Procedure and Evidence, and when it is in the interests of justice. This standard has been elaborated in ICTY and in subsequent ICTR jurisprudence. In particular the Chamber will consider the importance of the testimony; the inability or unwillingness of the witness to attend; and whether good reason has been adduced for the inability or unwillingness to attend.²

5. After considering the specific circumstances surrounding Witnesses IMG, ISG, and BJK1, the Chamber finds that it would be in the interests justice for these three witnesses to be allowed to testify via video-link from Kigali. The Chamber has reviewed their witness statements and is satisfied that their proposed evidence may be relevant to the case. The Chamber is also satisfied that good reason has been adduced for their unwillingness to travel to Arusha, in particular after further consultations with WVSS.

6. In the Chamber's view, authorizing video-link with respect to these three witnesses may avoid the need to issue a subpoena. Based on the Defence's submissions, Witnesses IMG and ISG appear willing to testify voluntarily, if allowed to do so discreetly from Kigali. Authorizing Witness BJK1 to testify in this manner will likely address his specific concerns, which make him reluctant to testify voluntarily.³ Video-transmission will facilitate the attendance of these witnesses and reduce the risk of delaying the completion of the Defence case, which is presently scheduled to resume from 14 February to 30 March 2005. The issuance of subpoenas is therefore pre-mature.

7. The Chamber's decision in no way detracts from the general principle articulated in Rule 90 (A) that "[w]itnesses shall, in principle, be heard directly by the Chamber".⁴ The Chamber's strong preference is that most witnesses should be heard in court. However, the Chamber can identify no particular reason why in court testimony might be preferable to hearing the witnesses live via video-link in the present circumstances.⁵

² *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004; *Bagosora et al.*, Decision on Prosecution Motion for Special Protective Measures for Witnesses A and BY (TC), 3 October 2003; *Bagosora et al.*, Decision on the Prosecution Motion for Special Protective Measures for Witness "A" Pursuant to Rules 66 (C), 69 (A) and 75 of the Rules of Procedure and Evidence (TC), 5 June 2002; *Nahimana et al.*, Decision on the Prosecutor's Application to Add Witness X to Its List of Witnesses and for Protective Measures (TC), 14 September 2001.

³ Witness BJK1 has indicated that he has received death threats related to his anticipated testimony before the Tribunal. While WVSS has confirmed that this is the reason for his refusal to travel to Arusha, the witness's concerns have not yet been substantiated before the Chamber. He is a protected witness. Therefore, WVSS is requested to keep the Chamber apprised of any information relevant to the witness's safety that might be implicated by the execution of this decision.

⁴ *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4.

⁵ *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 12, 15 ("Direct observation of the witness's demeanour is not, however, incompatible with electronic transmission. Experience has shown that electronic transmissions can provide a very clear audio and visual image of the witness to the judges and parties in the courtroom. Representation by the parties at the point of transmission ensures that the conditions of testimony are impartial and fair. The real-time nature of the broadcast facilitates the direct intervention of the judges during the testimony."(internal citations omitted)).

3225

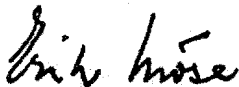
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence requests for the issuance of subpoenas;


AUTHORIZES the taking of the testimony of Witnesses BJK1, IMG, and ISG via video-link from the Tribunal's premises in Kigali;

INSTRUCTS the Registry, in consultation with the parties, to make all necessary arrangements in respect of the testimony of Witness BJK1, IMG, and ISG via video-link during the upcoming trial segment from 14 February to 30 March 2005, and to videotape the testimony for possible future reference by the Chamber.

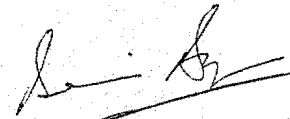
Arusha, 4 February 2005



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Dennis C. M. Byron
Judge

(Seal of the Tribunal)

