

ICTR-01-76-T
09-02-2005
(3239 - 3236)



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3239

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: 9 February 2005

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

JUDICIAL RECORDS/ARCHIVES
ICTR
RECORDED

2005 FEB - 9 A 9: 29 1

DECISION ON THE DEFENCE REQUEST FOR TAKING THE EVIDENCE OF
WITNESS FMP1 BY DEPOSITION

Office of the Prosecutor:

Richard Karegyesa
Sulaiman Khan
Ignacio Tredici
Amina Ibrahim

Counsel for the Defence

Sadikou Ayo Alao
Beth Lyons

bm

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 défense en vue de faire auditionner le témoin FMP1 sous la direction d’une personne mandatée par le tribunal”, filed on 18 January 2005;

CONSIDERING the Prosecution’s response, filed on 24 January 2005; and the Defence reply, filed on 28 January 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. Witness FMP1 was originally scheduled to testify during the first trial segment of the Defence case from 13 December to 17 December 2004, but was unable to come to Arusha. The Defence now seeks to take her evidence by deposition or by video-link on one of the following dates: 15 and 16 February 2005; 21 and 22 February 2005; 17 and 18 March 2005; 23 and 24 March 2005; or 28 and 30 March 2005.

SUBMISSIONS

2. The Defence states that Witness FMP1’s evidence supports the Accused’s alibi. The witness remains willing to testify on behalf of the Defence but is unable to come to Arusha to testify for health and employment reasons. The Defence contends that the witness’s health reasons, documented by a medical certificate, constitute exceptional circumstances for ordering a deposition pursuant to Rule 71 (A). In her letter to the Defence annexed to the motion, the witness notes that she is willing to testify by video-link from The Hague. Based on this, the Defence also requests this option, arguing that the criteria for taking a deposition by video-link has been satisfied.

3. The Prosecution argues that the Defence failed to adequately document the witness’s medical condition or to demonstrate that her testimony is sufficiently important or unique so that it would be unfair to proceed without it. Therefore, there are no exceptional circumstances which justify the taking of a deposition.

DELIBERATIONS

4. The Defence has requested a deposition of Witness FMP1. Rule 71 (A) provides the Chamber with the discretion to order the taking of depositions where exceptional circumstances exist and where it would be in the interests of justice. In this case, however, the Chamber does not find it necessary to consider ordering a deposition in light of the witness’s willingness to travel to The Hague to testify via video-link on several proposed dates which correspond to the upcoming trial segment. The Defence in its motion notes this willingness and also proposes it to

6h

the Chamber.¹ Rule 90 (A) sets forth the general principle that a witness shall be heard directly by the Chamber. For this reason, it would not be in the interests of justice to authorize a deposition where video-link testimony is feasible; this is a more direct form of evidence, and allows the full bench to observe the witness's demeanour.²

5. 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.³

6. The Chamber finds that in the present circumstances authorizing Witness FMP1's testimony by video-link is in the interests of justice. The witness's evidence appears to be relevant to the Accused's alibi. She is unable to travel to Arusha due to a medical condition documented by a signed statement from a physician. Medical grounds normally justify allowing video-link testimony.⁴ The medical certificate is only briefly worded. It would have been preferable for the Defence to provide greater detail concerning the witness's medical condition. However, attempts by the Chamber to obtain additional details have been unsuccessful, and the trial is scheduled to resume on 14 February 2005.

7. 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.

¹ The Defence, however, refers to this proposal as a deposition by video-conference as referred to in Rule 71 (C).

² See *Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2004, para. 7; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 12, 15 ("In its previous decision denying a deposition of this witness in lieu of testimony, the Chamber stated that '[t]he witness's credibility is, accordingly, of particular significance and should be tested before the Chamber, which can then directly observe the witness's demeanour'. 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)). See also *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4 ("This in no way detracts from the general principle, articulated in Rule 90 (A), that 'witnesses shall, in principle, be heard directly by the Chambers'").

³ *Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2004, para. 4; *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.

⁴ *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 5.

6h

FOR THE ABOVE REASONS, THE CHAMBER

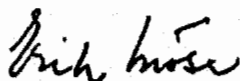
3236

DENIES the Defence request for a deposition;

ORDERS the taking of Witness FMP1's testimony via video-link from the seat of the Appeals Chamber in The Hague;

INSTRUCTS the Registry, in consultation with the parties, to make all necessary arrangements in respect of the testimony of Witness FMP1 via video-link, and to videotape the testimony for possible future reference by the Chamber.

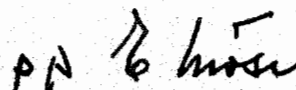
Arusha, 9 February 2005



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Dennis C. M. Byron
Judge

(Seal of the Tribunal)

