

ICTR-01-76-T
17-02-2005
(3274- 3272)

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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: 17 February 2005

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

2005 FEB 17 A 9:44
JUDICIAL RECORDS/ARCHIVES
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ORDER FOR THE TRANSFER OF DETAINED WITNESSES

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

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 an Order for the Transfer of Detained Witnesses", filed on 10 February 2005;

NOTING that the Prosecution has not filed a response;

HEREBY DECIDES the motion.

1. Pursuant to Rule 90 *bis* (A) of the Rules "[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal". Rule 90 *bis* (B) requires prior verification of two conditions for such an order:

- (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

2. The Defence moves the Trial Chamber for an order authorizing the transfer to the Tribunal of eight witnesses known under the pseudonyms HBK, NGJ2, HNJ, GGG1, RGJ1, BGN3, BGJ1, and KGJ2, who are to testify for the Defence during the present trial session. All of these witnesses are currently detained in Rwandan prisons.

3. The Chamber recalls that the Defence has the burden of providing specific information that the conditions set out in Rule 90 *bis* (B) are met.¹ In this connection the Chamber notes that the Defence does not provide official documentation from Rwandan authorities relating to these conditions, nor does it provide evidence of efforts to obtain such documentation.

4. The Chamber considers that it can only grant the Defence request if the requirements of Rule 90 *bis* (B) are met. However, it also notes that the Defence case is scheduled for completion by 30 March 2005. The Chamber finds that in these circumstances it should make an order for transfer, on the condition that prior to the transfer the Defence in cooperation with the Registry submit a report indicating that the conditions set forth Rule 90 *bis* (B) are satisfied.²

FOR THE ABOVE REASONS, THE CHAMBER

DIRECTS the Defence in co-operation with the Registry to verify as soon as possible with the Rwandan authorities that the conditions identified under Rule 90 *bis* (B) are met and submit a report on this matter to the Chamber; and once this direction has been fulfilled

¹ *Simba*, Order for Transfer of Witnesses (TC), 24 February 2004, para. 4.

² *Kajelijeli*, Decision on Kajelijeli's Motion for Transfer of Detained Witnesses (TC), 14 July 2002.

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ORDERS that the individuals designated under the pseudonyms HBK, NGJ2, HNJ, GGJ1, RGJ1, BGN3, BGJ1, and KGJ2 be transferred as soon as practicable to the Tribunal's detention facilities in Arusha, for a period not to exceed 30 March 2005;

REQUESTS the Government of Rwanda to comply with this order and arrange for the transfer in co-operation with the Registrar and the Tanzanian Government;

INSTRUCTS the Registrar to:

A) Transmit this decision to the Governments of Rwanda and Tanzania;

B) Ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;

C) Remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change.

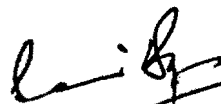
Arusha, 17 February 2005



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Dennis C.M. Byron
Judge

(Seal of the Tribunal)

