



ICTR-98-41-T
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
22-02-2005
(23816-23814)

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Ivan

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 22 February 2005

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2005 FEB 22 A 9 31 11

DECISION ON NTABAKUZE MOTION TO ALLOW WITNESS DK 52 TO GIVE
TESTIMONY BY VIDEO-CONFERENCE

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Paul Skolnik
René Saint-Léger
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the Tribunal”),

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the “Ntabakuze Motion to Allow Witness DK 52 to Give Testimony by Video-Conferencing”, filed on 2 February 2005;

CONSIDERING the Prosecution response, filed on 4 February 2005;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Ntabakuze Defence requests that the testimony of one of its witnesses, DK-52, be heard by video-conference. The Defence is scheduled to commence the presentation of its case on 30 March 2005.

SUBMISSIONS

2. The Defence submits that Witness DK-52 is uniquely able to provide exculpatory evidence concerning the Accused Ntabakuze, based on her familiarity with the rules, procedures and functioning of the Rwandan army during the war in 1994, and based on her direct knowledge of the leadership and character of the Accused. The witness is said to be unwilling to give her testimony in Arusha because of the disruption to her family and professional life in Europe, where she currently resides as a refugee, and because of the trauma of her flight from Rwanda in 1994. The Defence submits that it would be unfair to proceed without the benefit of this important testimony and that video-conferencing is necessary and in the interest of justice.

3. The Prosecution argues that the Defence has demonstrated only the witness’s unwillingness, not refusal, to testify in Arusha. Further, insufficient information has been given concerning the witness’s circumstances, or the possibility of arrangements that might ameliorate her concerns. The Prosecution asserts that the reasons for the witness’s refusal to testify amount only to an inconvenience to family or work, which is an insufficient justification for permitting video-conference testimony.

DELIBERATIONS

4. Testimony may be heard by video-conference in lieu of a physical appearance where it is in the interests of justice, based on an assessment of: the importance of the testimony; the inability or unwillingness of the witness to attend; and whether good reason has been adduced for that inability or unwillingness.¹ Past decisions have held that inability to attend (for

¹ *Simba*, Decision on the Defence Request for Taking the Evidence of Witness FMPI by Deposition (TC), 9 February 2005; *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. Video-conference testimony may also be authorized for witness protection purposes: see *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.


example, because of ill-health) is not a prerequisite for granting video-conference testimony. On the other hand, the witness must refuse to testify on the basis of genuinely-held and well-founded reasons which give the Chamber reason to believe that the testimony would not otherwise be heard.²

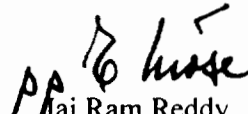
5. The present motion does not adequately establish the witness's refusal to testify before the Chamber, nor the basis of her refusal. The inconveniences to the witness, as recounted in the motion, do not appear to be extraordinary. It is not clear that the witness has refused to testify in person after being informed of her moral and legal obligation to do so, nor that all possible solutions to the difficulties occasioned by her testimony have been explored. Finally, the Defence has not proposed a site from which the video-testimony would be given, which may be relevant in the Chamber's evaluation of the interests of justice.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 22 February 2005


Erik Møse
Presiding Judge


P. Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge



² *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 10, 13 (witness's repeated refusal to comply with subpoena indicates that subjective fears of intimidation "genuinely and deeply held"); *Tadic*, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link (TC), 25 June 1996, para. 19 (refusal to testify because of fear of arrest in The Hague justifies testimony by video-conference).