

ICTR-01-76-T
04-05-2005
(3319 - 3316)



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3319
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 May 2005

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

JUDICIAL RECORDS/ARCHIVES
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DECISION ON DEFENCE REQUEST FOR SUBPOENAS

Office of the Prosecutor:

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

3318

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 aux fins d’obtenir que la chambre ordonne la comparution des témoins a décharge BJK1 et HBK et prescrive des mesures de protection susceptibles de garantir leur sécurité”, filed on 29 March 2005;

CONSIDERING the Prosecution’s response, filed on 4 April 2005; and the Defence’s reply, filed on 11 April 2005;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence requests the Chamber to issue subpoenas to Witnesses BJK1 and HBK.¹ The witnesses have refused to testify, as originally scheduled, citing security concerns. Article 20 (4)(e) of the Statute guarantees an accused the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. To these ends, the Chamber may issue a subpoena if a witness refuses to appear voluntarily and if the proposed evidence is relevant.²

DELIBERATIONS

2. The Prosecution argues that the request should be denied because the Defence did not adequately substantiate the threats against the witnesses. However, the Defence must only show that it has made reasonable efforts to obtain the witnesses’ voluntary cooperation and was unsuccessful. The Tribunal’s Witness and Victims Support Section (WVSS) has confirmed that both Witness BJK1 and HBK are no longer willing to voluntarily appear in this case.³

3. The Prosecution also asserts that the evidence of these witnesses are not necessary because it would be cumulative of other evidence already on record. The Chamber notes that Witness BJK1’s proposed testimony is relevant because he accompanied the Accused from 7 April until July 1994. As the Prosecution submits, a number of other witnesses have also testified in relation to the Accused’s alibi. Nonetheless, Witness BJK1 is the only witness whose testimony allegedly

¹ The Defence has closed its case subject to the Chamber’s disposition on this motion. T. 29 March 2005 p. 33. In a decision of 4 February 2005, the Chamber authorized Witness BJK1 to testify via video-link from Kigali to allay his reluctance to appear voluntarily. *Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2005, para. 6. On 17 February 2005, the Chamber authorized the transfer of Witness HBK, who is detained in Rwanda. *Simba*, Order for the Transfer of Detained Witnesses (TC), 17 February 2005.

² *Simba*, Decision on the Defence Request for a Subpoena for Witness SHB (TC), 7 February 2005, para. 3; *Halilovic*, Decision on Issuance of Subpoenas (AC), 21 June 2004, paras. 6, 10; *Kristic*, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10.

³ T. 13 December 2004 p. 12; T. 29 March 2005 p. 24. *See also* Defence Reply, Annex (Email dated 24 March 2005, Registry page no. 4266 bis).

provides first-hand corroboration for the entirety of the alibi. Also, Witness HBK's anticipated testimony is relevant to the proceedings. The Chamber notes that much of his proposed testimony is second-hand and may be cumulative of other evidence on the record. However, he has been implicated as a co-author of the crimes charged against the Accused. Consequently, his testimony may be of interest.

4. The Registry shall prepare subpoenas addressed to these witnesses to give evidence in this case on a date to be determined after further consultations with the parties. The timing for the hearing of the evidence of these witnesses does not alter the deadlines for the submission of the final trial briefs on 22 June 2005 or closing arguments on 7-8 July 2005.⁴ Statements for these witnesses have already been disclosed. The Prosecution has also already interviewed Defence Witness BJK1. Therefore, the prospective evidence of these witnesses may be fully discussed during oral arguments.

5. Witness BJK1 has indicated that he has received death threats related to his anticipated testimony before the Tribunal. Consultations with WVSS indicate that the witness's subjective fear is genuine. The Chamber also notes that two witnesses, detained with Witness HBK, recounted harassment by local officials in connection with their testimony.⁵ Following instructions from the Chamber, WVSS has conducted investigations and brought this to the Rwandan government's attention so that it can make further inquiries and take appropriate action, if necessary. The Chamber requests the Rwandan government to take all necessary measures to ensure the safety of Witnesses BJK1 and HBK. The WVSS is requested to keep the Chamber apprised of any information relevant to the witnesses' safety that might be implicated by the execution of this decision.

⁴ Hearing additional witnesses after the filing of final briefs and prior to argument would be consistent with the practice of the Appeals Chamber when it takes additional evidence on appeal. *See, e.g., Kamuhanda*, Scheduling Order (AC), 18 April 2005, paras. 1-2.

⁵ Witness RGJ1, T. 17 March 2005 pp. 8-9, 30-33; Witness NGJ2, T. 21 March 2005 pp. 6-11.

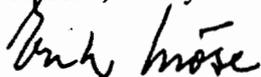
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence request to issue subpoenas to Witnesses BJK1 and HBK;

ORDERS the Registry to prepare two subpoenas in accordance with this decision, addressed to Defence Witnesses BJK1 and HBK, and to communicate the subpoenas, with a copy of the present decision, to the relevant Rwandan authorities;

REQUESTS the Rwandan authorities to serve the subpoenas on Witnesses BJK1 and HBK as soon as possible, to take all appropriate measures to ensure their protection, and to provide any other assistance that may be requested by the Registry to facilitate their attendance at trial.

Agusha, 4 May 2005



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Dennis C. M. Byron
Judge

[Seal of the Tribunal]

