

ICTR-05-84-I
08-06-2006
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 8 June 2006

THE PROSECUTOR

v.

Joseph SERUGENDO

Case No. ICTR-05-84-I

JUDICIAL RECORDS/ARCHIVES
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~~DECISION ON URGENT MOTION FOR THE DEPOSITION OF JOSEPH SERUGENDO~~

Office of the Prosecutor

Counsel for the Defence

~~Hassan Bubacar Jallow~~
Stephen Rapp
William Egbe

~~Cecil J. Maruma~~

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

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

BEING SEIZED OF the “Prosecutor’s Extremely Urgent Motion for the Deposition of Joseph Serugendo”, of 2 June 2006;

NOTING the Defence response, which was filed on 5 June 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Prosecution seeks the deposition of Joseph Serugendo on the basis that Serugendo is in extremely poor health. A medical report filed before the Tribunal in the context of Serugendo’s sentencing hearing on 1 June 2006 states that he suffers from a terminal illness.¹ Serugendo’s current state of health is fragile and deteriorating, and his prognosis is poor.² The Prosecution fears that the medical condition of Serugendo may soon deteriorate to the point that he may be unable to testify.³ Deposition is accordingly sought to preserve, for use in future proceedings, the testimony of Serugendo contained in approximately 200 pages of debriefing provided by him to the Prosecution.⁴ The Prosecution intends to use the deposition in various ongoing and future trials. As Serugendo’s state of health may not permit him to await the outcome of various decisions, and in order to save time and judicial resources, this Motion is a consolidated request to introduce the deposition in all such future proceedings. In so doing, the Prosecution acknowledges its obligation to provide notice to each Accused person against whom the deposition may be used and his counsel of the time of the deposition so as to accord them an opportunity to cross-examine Serugendo.⁵ It further acknowledges that the decision as to the admissibility of the deposition as Prosecution evidence in any future proceeding is reserved to the Trial Chambers in which the Prosecution may seek to introduce the deposition.⁶

~~2. The Defence does not oppose the motion.~~

¹ *Prosecutor v. Serugendo*, Case No ICTR-2005-84-I, Defence Exhibit D13 (under seal). On 2 June 2006, Joseph Serugendo was sentenced to a term of imprisonment of six years, having previously pleaded guilty to one count of direct and public incitement to commit genocide and to one count of persecution as a crime against humanity. His substantial cooperation with the Prosecution and his terminal illness were determined by the Trial Chamber to be significant factors in mitigation of punishment (*Serugendo*, Judgement and Sentence (TC), 8 June 2006, paras. 62, 74). His state of health was acknowledged by the Chamber to require a modified regime of detention and hospitalization. (*Id.*, para. 74, disposition).

² *Id.*, Defence Exhibit D13 (under seal).

³ Motion, para. 6.

⁴ *Id.*, para. 7.

⁵ *Id.*, para. 8(d).

⁶ *Id.*, para. 8(e).

DELIBERATIONS

3. Rule 71 (A) of the Rules of Procedure and Evidence (“the Rules”) provides the Chamber with the discretion to grant the taking of depositions where exceptional circumstances exist and where it would be in the interests of justice. In addition, Rule 71 (B) stipulates certain requirements with which the request for deposition must comply.⁷

4. The rapidly deteriorating health of Serugendo, as attested to by the Prosecution and the above-mentioned medical report, constitutes an exceptional circumstance within the meaning of Rule 71.⁸ Although to date, most depositions have been taken in the context of ongoing trials, the Chamber takes note of Serugendo’s terminal illness and poor prognosis, as well as the Prosecution’s submissions on the extensive and significant character of his testimony and its likely relevance to many current and future proceedings.⁹ The Chamber accordingly finds it to be in the interests of justice to permit his deposition to be taken in order to preserve this evidence for future use. The decision as to the admissibility of the deposition in any future proceeding is ultimately a matter for the Trial Chambers before which the Prosecution may seek to introduce the deposition as evidence.

5. The Chamber recalls the right of the Defence to be present during the deposition, and to cross-examine Serugendo if they so wish.¹⁰ In the present circumstances, this right extends to Counsel of all Accused against whom the Prosecution intends to use the deposition.¹¹

6. Rule 71 (B) requires that a motion should include “a statement of the matters on which the person is to be examined”. In the motion, the Prosecution states that the witness “has given an extensive statement on what he knows regarding the genocide in Rwanda in 1994” and that it “bears important prosecution evidence in a number of trials both on-going and yet to be started”.¹² Although the Prosecution undertakes to disclose

⁷ Rule 72 (B) stipulates that the motion for the taking of a deposition “shall indicate the name and whereabouts of the witness whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined and of the exceptional circumstances justifying the taking of the deposition.”

⁸ See eg. *Simba*, Decision on Defence’s Urgent Motion for a Deposition (TC), 11 March 2004, para. 7; *Nahimana, Ngeze and Barayagwiza*, Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition (TC), 10 April 2003, para. 8; *Muvunyi*, Decision on the Prosecutor’s Extremely Urgent Motion for the Deposition of Witness QX (TC), 11 November 2003, para. 10; *Bagosora et al*, Decision on Prosecutor’s Motion for Deposition of Witness OW (TC), 5 December 2001, para. 12.

⁹ Motion, paras. 2-6, 8(b), 11.

¹⁰ Rule 71 (C) of the Rules.

¹¹ Hereinafter “all Defence Parties.” Should the Prosecution seek to use the deposition as evidence against other Accused in the future, but where it has not at this stage identified these Accused, the decision as to the admissibility of the deposition in such proceedings will also be a matter for the Trial Chamber in question to decide.

¹² Motion, paras. 11-12.

Serugendo's statement to all Defence parties,¹³ the information provided in the motion is vague and insufficiently precise to constitute a statement of the matters for examination.¹⁴

7. Given the exceptional circumstances of the present case, the Chamber does not deny the motion on this basis, on the condition that further particularization is provided by the Prosecution forthwith. The Chamber further requests that the Prosecution specify the date and place at which the deposition is to be taken, following consultation with the Registry and all Defence parties, as soon as reasonably practicable.

FOR THE AFOREMENTIONED REASONS, THE CHAMBER

I. GRANTS the Prosecutor's Extremely Urgent Motion for the Deposition of Joseph Serugendo, and **ORDERS** that the deposition be recorded on videotape, and placed under seal;

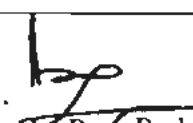
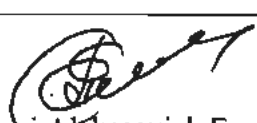
II. ORDERS that the deposition be taken at a place to be chosen by the Registry at the earliest practicable date to be agreed between the Prosecution and all Defence parties, and that this date be communicated to the Chamber as soon as practicable;

III. ORDERS the Prosecution to immediately provide a statement of the matters on which Serugendo is to be examined to the Chamber and all Defence parties;

IV. ORDERS the Prosecution to disclose the statement of Joseph Serugendo to all Defence parties as soon as practicable, but no less than one week prior to the agreed date of the deposition, so as to allow adequate time for preparation of the Defence;

V. ORDERS the Registrar to appoint a Presiding Officer for the taking of the deposition of Joseph Serugendo and to make all necessary arrangements to facilitate the taking of the deposition.

Arusha, 8 June 2006

<p>P.P.</p> <p>Erik Møse Presiding Judge</p>	 <p>Sai Ram Reddy Judge</p>	 <p>Sergsi Alekseevich Egorov Judge</p>
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[Seal of the Tribunal]

¹³ *Id.*, para. 18.

¹⁴ See *Simba*, Decision on Defence's Urgent Motion for a Deposition (TC), 11 March 2004, para. 8: "The other party, in deposition applications in particular, is entitled to know what the witness will testify to, given that deposition is an exceptional measure."