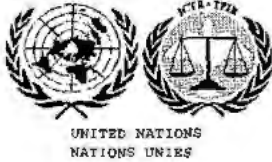


ICTR-98-41-T
15-06-2006
(28199-28197)

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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: 15 June 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

JUDICIAL OFFICE
ICTR
1203 2011 P 6:191
Adama Dieng

ORDER FOR TRANSFER OF DEFENCE WITNESS JEAN KAMBANDA

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'omanwa

Oh

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 Bagosora "Requête en Extrême Urgence", etc., filed on 7 June 2006;

CONSIDERING the Ntabakuze "Response to Bagosora Request to Transfer Witness Jean Kambanda", etc., filed on 13 June 2006; and the Corrigendum thereto, filed on 14 June 2006;

HEREBY DECIDES the motion.

1. The Bagosora Defence requests an order for the temporary transfer of one its witnesses, Jean Kambanda, to the Detention Unit of the Tribunal in Arusha for the purpose of testifying before the Chamber. Mr. Kambanda is serving a life sentence of this Tribunal in the Republic of Mali.¹ The Bagosora Defence wishes to call Mr. Kambanda before the end of the present trial session on 14 July 2006. Mr. Kambanda has previously indicated his willingness to testify on behalf of the Accused.²

2. Rule 90 *bis* (B) of the Rules of Procedure and Evidence sets two conditions for such an order: first, that "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"; and second, that the "[t]ransfer ... does not extend the period of his detention as foreseen by the requested State." Furthermore, Article 4 of the agreement between the United Nations and the Republic of Mali specifically provides for the temporary transfer of a detained person for the purpose of giving testimony, provided that the detainee is not required for criminal proceedings in Mali.³

3. The Chamber has been advised by the Registry that Mr. Kambanda is not required for criminal proceedings in Mali during the proposed period of transfer. The first condition, therefore, is satisfied. As Mr. Kambanda is serving a life sentence, there is no scope for the application of the second condition.

¹ *Kambanda*, Judgement (TC), 4 September 1998, p. 28; *Kambanda*, Judgement (AC), 19 October 2000, p. 39.

² *Bagosora et al.*, Order for Transfer of Defence Witness Jean Kambanda (TC), 27 February 2006, paras. 1, 3. The witness was previously transferred to the Tribunal's detention facilities in anticipation of testifying during the last trial session. However, before he could testify, the Chamber was seized of a motion for severance by Kabiligi, Nsengiyumva and Ntabakuze, who opposed his appearance and requested a stay. On 27 March 2006, the Chamber issued its written reasons for denying severance. On 3 April 2006, the Defence filed a request for certification of that decision, and again requested a stay of Kambanda's testimony pending resolution of the matter. That motion was still under consideration when the trial session ended on 7 April 2006.

³ Agreement Between the Government of the Republic of Mali and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, 12 February 1999, registered 4 October 2000 (Reg. No. 36963), <<http://www.icttr.org/ENGLISH/agreements/mali.pdf>>.

4. The submissions filed by the Ntabakuze Defence are not relevant to Rule 90 *bis*, which governs the conditions for ordering the physical transfer of the witness. The substance of the Ntabakuze submissions is that the testimony of the witness would be prejudicial and that, accordingly, the testimony should either be excluded as against him, or that Kambanda should not be permitted to testify at all. These questions are not properly within the scope of Rule 90 *bis* and shall be addressed in a separate decision.

FOR THE ABOVE REASONS, THE CHAMBER

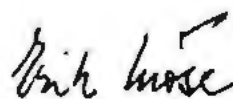
ORDERS, conditional upon the agreement of the Government of Mali, that Jean Kambanda shall be temporarily transferred to the Detention Unit in on or about 15 June 2006, and returned no later than 30 July 2006, pursuant to Rule 90 *bis* of the Rules;

REQUESTS the Government of Mali to facilitate the transfer in cooperation with the Registrar and the Government of Tanzania;

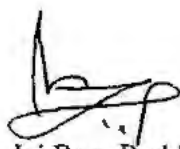
INSTRUCTS the Registrar to:

- A) transmit this decision to the Governments of Mali 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 timing of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change.

Arusha, 15 June 2006



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

