

ICTR-01-74-T
29-06-2006
(7419-7416)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

7419
146h

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 29 June 2006

THE PROSECUTOR

v.

François KARERA

Case No. ICTR-01-74-T

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DECISION ON TESTIMONY BY VIDEO-LINK

The Prosecution

Charles Adeogun-Phillips
Adesola Adeboyejo
Peter Tafah
Memory Maposa
Florida Kabasinga

The Defence

Carmelle Marchesault
Steven Kelliher

6h

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the “Extremely Urgent Defence Application for Testimony to be taken by Video-Conference”, and the supplement thereto, filed on 5 and 12 May 2006, respectively;

HEREBY DECIDES the motion.

INTRODUCTION

1. Defence Witnesses YMK, BBM, BBA and KMS reside in Europe and refuse to travel to Arusha. The Defence asks that they be allowed to testify via video-link from Brussels or The Hague. It bases its request on Rules 54 and 71 of the Rules of Procedure and Evidence (“the Rules”), arguing that the interest of justice and the rights of the Accused justify hearing their testimonies in this manner. The Prosecution does not object to the motion.¹

DELIBERATIONS

2. Testifying through video-conference is an exception to the general principle, articulated in Rule 90 (A) of the Rules, that witnesses “shall, in principle, be heard directly by the Chambers”.² The Chamber may authorize testimonies by video-conference where it is in the interest of justice, based on a consideration of the importance of the testimony; the inability or unwillingness of the witness to attend; and when a good reason has been adduced for the inability or unwillingness to attend. Where the witness is unwilling to attend, his refusal must be genuine and well-founded, giving the Chamber reason to believe that the testimony would not be heard unless the video-conference is authorized.³

Importance of the testimony

3. Witnesses YMK, BBA and BBM are alibi witnesses. The Defence submits that their evidence is important to its case. Witnesses YMK and BBA are expected to testify about the presence of the Accused in Ruhengeri in April 1994. Witness BBM will give evidence about the absence of the Accused from Cyivugiva cellule after 6 April 1994. The Chamber does not find that the evidence of these three witnesses is merely cumulative to the testimonies of other alibi witnesses called by the Defence so far. Consistent with the rights of the Accused under Article 20 of the Statute, the Chamber regards evidence which goes directly to prove the alibi of the Accused as important to the Defence case.

4. As for Witness KMS, the Defence has not shown that his evidence is essential to its

¹ T. 18 May 2006 pp. 33-34.

² ~~Nahimana et al.~~, Decision on the Prosecutor's Application to add Witness X to its List of Witnesses and for Protective Measures, 14 September 2001, para. 35; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004 (“*Bagosora*, Decision of 8 October 2004”), para. 15; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004 (“*Bagosora*, Decision of 20 December 2004”), para. 4.

³ *Bagosora*, Decision of 8 October 2004, paras. 6-7; *Bagosora*, Decision of 20 December 2004, para. 4; *Bagosora*, Decision on Ntabakuze Motion to Allow Witness DK 52 to give Testimony by Video-Conference, 22 February 2005 (*Bagosora*, Decision of 22 February 2005”), para. 4.

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case. Furthermore, the Defence indicated orally before the Chamber that Witness KMS may eventually be persuaded to travel to Arusha.⁴

Inability or Unwillingness to Attend

5. The Defence asserts that Witnesses YMK and BBA refuse to travel to Arusha out of fear for their personal safety. It claims the witnesses are mindful of "the recent apparent execution" in Brussels (Belgium) of a potential witness. Witness YMK initially agreed to testify in person, despite his fears, but retracted his consent due to two recent events which enhanced his apprehension: the Prosecutor's absence from an allegedly pre-arranged meeting with the witness; and a request from the Witnesses and Victims Support Section (WVSS) to advance his arrival. The Defence avers to have made repeated efforts to convince the witness to travel to Arusha, but in vain. The Chamber is aware of similar attempts by the WVSS. Accordingly, the Chamber finds that Witness YMK's fear is genuine and amounts to an unwillingness to attend.⁵

6. Witness BBA's concerns for his personal safety are supplemented by his fear of losing his livelihood. He claims that subsequently to testifying in Arusha in another ICTR trial, he nearly lost his job. The Chamber considers that practical inconveniences related to family or work, do not in themselves justify testimonies through video-link.⁶ However, a loss of the source of income of a refugee who supports a family is more than a "practical inconvenience". Furthermore, the concerns of the witness are based on his own past experience. The Chamber accepts his reasons for refusing to travel to Arusha.

7. Witness BBM refuses to travel to Arusha as she suffers from fear of flying. Such fear may render a witness unable to attend proceedings in Arusha. The Defence undertook to provide, by 8 June 2006, a medical attestation confirming Witness BBM's condition but has not done so.⁷ Consequently, the Chamber does not have a sufficient basis to conclude that the witness is unable to travel to Arusha and hence for allowing her to testify via video-link.⁸

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion with respect to Witnesses YMK and BBA;

DENIES the remainder of the motion.

⁴ T. 12 May 2006 p. 7.

⁵ In another case, this Chamber allowed a witness who refused to travel to Arusha due to fear for reprisals against her family, to testify via video-link. The Chamber was unable to assess whether the fear was objectively justified, but held that "the witness's continued refusal to come to Arusha in spite of the service of a subpoena indicates that these fears are genuinely and deeply held". *Bagosora*, Decision of 8 October 2004, para. 13. In the present case, a subpoena was not requested. However, various persuasion efforts by both the Defence and the WVSS have failed.

⁶ *Bagosora*, Decision of 22 February 2005, para. 5.

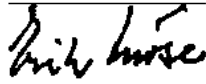
⁷ T. 1 June 2006 pp. 5-6.

⁸ In another case, this Chamber allowed a witness whose medical condition prevented his arrival in Arusha, to testify through video-link. In that case, however, a doctor's letter confirming the witness's fragile medical condition was appended to the motion. *Bagosora*, Decision of 20 December 2004, para. 1.

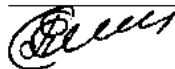
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ORDERS the Registry, in consultation with the parties, to make all necessary arrangements to facilitate the testimonies of Witnesses YMK and BBA via video-conference, from either Brussels or The Hague, and to videotape the testimonies for possible future reference by the Chamber.

Arusha, 29 June 2006



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]

