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ICTR-98-41-T
06-07-2006
(28494-28492)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

28494
S. Muna

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 6 July 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

DECISION ON NTABAKUZE REQUEST FOR EXCLUSION OF TESTIMONY OF 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

6/7

28493

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 Ntabakuze "Response to Bagosora Request to Transfer Witness Jean Kambanda, and Ancillary Request for Exclusion of Evidence", filed by the Ntabakuze Defence on 13 June 2006; and the Corrigendum thereto, filed on 14 June 2006;¹

CONSIDERING the Prosecution Response, filed on 15 June 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. Ntabakuze requests that the anticipated testimony of Jean Kambanda, a prospective Bagosora witness, be excluded as against him. The witness's testimony is "Prosecution-oriented", and would not be heard but for the fact that Ntabakuze is being tried jointly with a co-accused who has a different view of the desirability of calling the witness. In any event, the witness is so devoid of credibility that his testimony will be of little or no evidentiary value. Having denied a previous request for severance, the Chamber must grant exclusion as the only possible way to mitigate the prejudicial effect of the witness's testimony, and to preserve the Accused's right under Rule 82 (A) to be accorded the "same rights as if he were being tried separately".

DELIBERATIONS

2. The grounds for the present request have, to a substantial degree, already been litigated. In denying a request for severance based on the alleged serious prejudice that the three accused other than Bagosora would suffer from Kambanda's testimony, the Chamber held:

No such "serious prejudice" has been established. The fact that more evidence will be heard than would be the case if the three co-Accused had absolute control over the presentation of the defence does not constitute "serious prejudice", as is amply demonstrated by the jurisprudence concerning antagonistic defences. This is a normal incident of a joint trial which, in other respects, may be beneficial to the three co-Accused or to the administration of justice. The proposed testimony of Jean Kambanda is not even alleged to concern any of the co-Accused individually. Indeed, the motion emphasizes that the testimony is prejudicial to all four accused, demonstrating that there is a disagreement between the three co-Accused and the Bagosora Defence, rather than a conflict of interest. If evidence is adduced which, in the opinion of the co-Accused, is prejudicial to their interest, then they will have the opportunity, subject to the Chamber's control, to cross-examine the witness on any matter raised by the Prosecution and, where legally justified, to call additional rebuttal evidence. In short, the co-Accused have not demonstrated that there is any

¹ The request for the witness's transfer was granted by *Bagosora et al.*, Order for Transfer of Defence Witness Jean Kambanda (TC), 15 June 2006.

28492

specific aspect of the witnesses' testimony which is particularly or unusually prejudicial so as to justify severance.²

Nothing in the present submissions alters the Chamber's view of the nature of the testimony, or the need to suppress it as against the accused other than Bagosora.

3. The Defence has made no showing that the evidence is irrelevant; falls within Rule 95 as having been "obtained by methods which cast substantial doubt on its reliability" or as being "antithetical to, and would seriously damage, the integrity of the proceedings"; or should for any other reason be excluded. Lack of credibility is not a basis for excluding a witness's testimony, nor is disagreement with the decision of another counsel to call a witness.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 6 July 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

² *Bagosora et al.*, Decision on Request for Severance of Three Accused (TC), 27 March 2006 para. 8. A request for certification of this decision was denied by *Bagosora et al.*, Decision on Certification of Request for Severance of the Three Accused (TC), 22 May 2006.