



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

16TR-98-41-1
29-08-2006
(29225-29223)

29225
S. Muna

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 29 August 2006

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

DECISION ON NSENGIYUMVA MOTION FOR
WITNESS HIGANIRO TO TESTIFY BY VIDEO-CONFERENCE

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

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA,

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

BEING SEIZED of “Anatole Nsengiyumva’s Extremely Urgent Motion for the Testimony of Mr. Alphonse Higaniro to be Taken by Video-Conference”, etc., filed by the Nsengiyumva Defence on 3 July 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Nsengiyumva Defence requests that the testimony of one of its witnesses who is currently in detention in Belgium, Alphonse Higaniro, be heard by video-conference. Although Mr. Higaniro has expressed his willingness to testify, the Belgian authorities have indicated that Belgian law prohibits his physical transfer to give testimony in Arusha.

DELIBERATIONS

2. Under Rule 54 of the Rules of Procedure and Evidence, a Chamber may authorize the hearing of testimony by video-conference in lieu of a physical appearance where it is “in the interests of justice”.¹ In making this determination, the Chamber must consider: the importance of the testimony; the inability or unwillingness of the witness to attend; and whether good reason has been adduced for that inability or unwillingness.²

3. Mr. Higaniro’s testimony is said to rebut the testimony of Witness XBH that the Accused met in Butare with Colonel Bagosora and others to discuss plans for genocide against the Tutsis, in particular, by preparing lists of prominent persons to be killed. Mr. Higaniro himself is alleged by Witness XBH to have been present at a meeting in Butare with the Accused during which an operation to kill Tutsis was discussed.³ Accordingly, the Chamber accepts that the testimony is of potential importance. Further, the letter from the Belgian authorities annexed to the motion indicates that transfer of the witness to Arusha is not possible because of his detention in Belgium. In light of these considerations, the Chamber considers that it is in the interests of justice to permit Mr. Higaniro to testify by video-conference.

¹ *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 5-8. Video-conference testimony may also be authorized for witness protection purposes, but no such application had been made in the present motion.

² *Bagosora et al.*, Decision on Ntabakuze Motion to Allow Witness DK-52 to Give Testimony By Video-Conference (TC), 22 February 2006; *Simba*, Decision on the Defence Request for Taking the Evidence of Witness FMP1 by Deposition (TC), 9 February 2005; *Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2004, para. 4; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004.

³ T. 3 July 2003 p. 27

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FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion;

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ORDERS the Registry, in consultation with the Defence, to make all necessary arrangements to facilitate the testimony of Witness Alphonse Higaniro via video-conference, and to videotape the testimony for possible future reference by the Chamber.

Arusha, 29 August 2006



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

