



ICTR-78-4-I
19-09-2006
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(2971)-29715)

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TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 19 September 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

2006 SEP 19 11:08
JUDICIAL RECORDS/ARCHIVES
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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

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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 “Requête ... sollicitant une ordonnance de transfert”, etc., filed by the Bagosora Defence on 14 September 2006;

CONSIDERING the Prosecution Response, filed on 15 September 2006;

HEREBY DECIDES the motion.

1. The Bagosora Defence requests an order for the temporary transfer of one of 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 He testified before the Chamber on 11, 12 and 13 July 2006, before the balance of his testimony was postponed pending resolution of a motion for the exclusion of parts of his testimony or for severance.² The Bagosora Defence requests that he be available in Arusha for the continuation of his testimony as of 2 October 2006, to be completed before the end of the present trial session on 13 October 2006. The Prosecution does not oppose the request, but asks that the testimony be heard as soon as practicable and that the order should continue in effect until the completion of the witness's testimony, whenever that may be.

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. The precise timing of the witness's testimony is a different matter. The Chamber will, however, take into account the view of the Bagosora Defence that the witness should not continue his testimony until the return of Lead Counsel to Arusha, on or about 2 October 2006.

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

² *Bagosora et al.*, Decision on Severance or Exclusion of Evidence Based on Prejudice Arising From Testimony of Jean Kambanda (TC), 11 September 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.ictor.org/ENGLISH/agreements/mali.pdf>>.

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FOR THE ABOVE REASONS, THE CHAMBER

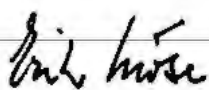
ORDERS, conditional upon the agreement of the Government of Mali, that Jean Kambanda shall be temporarily transferred to the Detention Unit as soon as possible and returned no later than 30 October 2006, pursuant to Rule 90 *bis* of the Rules;

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

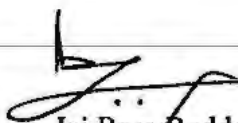
INSTRUCTS the Registrar to:

- 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, 19 September 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

