



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
05-10-2006
(30118-30116)

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ORIGINAL: ENGLISH

x. Adonou

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 5 October 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

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DECISION ON VIDEO-CONFERENCE TESTIMONY OF KABILIGI
WITNESSES KX-38 and KVB-46

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

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 the Kabiligi Defence "Motion to Request the Testimony of Witnesses KX-38 and KVB-46 via Video Link", filed on 20 September 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Kabiligi Defence requests that two of its witnesses be heard by video-conference. Both are willing to testify, but refuse to travel to Arusha on the basis that, as prominent opponents of the present Government of Rwanda, their security would be at risk.

DELIBERATIONS

2. Testimony by video-conference may be ordered pursuant either to Rule 54 of the Rules of Procedure and Evidence, on the basis that it is "in the interests of justice"; or as a witness protection measure under Rule 75, which requires that the video-conference be "necessary to safeguard the witness's security".¹ The Kabiligi Defence invokes both Rules in support of the present application.

3. Whether video-conference testimony is in the interests of justice under Rule 54 depends on three factors: the importance of the testimony; the witness's inability or unwillingness to attend; and whether a good reason has been adduced for that inability or unwillingness.² Although it is not absolutely necessary that the reason for the refusal to attend be objectively justified, a showing must at least be made that the witness has a credible basis for the refusal, and that those grounds are genuinely held.³

4. Witness KX-38 refuses to travel to Arusha on the basis that he is a prominent opponent of the present Government of Rwanda. He went into exile in 1994. The motion suggests that the witness's fears are based on the untimely and unexplained deaths of other members of the opposition and on alleged ongoing harassment. He is said to have known the Accused for a long time and is in a position to testify that the Accused was not racially prejudiced or an extremist. The witness's refusal to travel to Arusha is manifest in an email from the witness to counsel for the Defence, which is contained in a confidential and *ex parte* annex to the motion.⁴

¹ *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 5-8; *Nahimana et al.*, Decision on the Prosecutor's Application to Add Witness X to its List of Witnesses and for Protective Measures (TC), 14 September 2001.

² *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video Link, 8 October 2004, para 6; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4.

³ *Bagosora et al.*, Decision on Testimony of Witness Amadou Deme by Video-Link (TC), 29 August 2006, para. 5; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link (TC), 8 October 2004, paras. 6, 13.

⁴ Motion, Annex B.

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5. Witness KVB-46 is a former senior Rwandese official who subsequently became a leader of an opposition group. The motion indicates that he has first-hand knowledge that the Accused supported the Arusha Accords. The witness states in an email to Counsel for Kabiligi that his refusal to testify in Arusha is "a matter of life or death".⁵

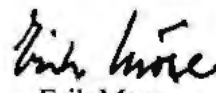
6. The Defence has established that both witnesses refuse to travel to Arusha on the basis of genuinely-held fears. Although the Chamber is not in a position to determine the objective justification of those fears, the Defence has shown that both witnesses are high-profile individuals who may be particularly anxious about their security. The witnesses appear to be able to give potentially exculpatory testimony in respect of clearly-defined issues. On this basis, the Chamber considers that it is in the interests of justice to allow these witnesses to testify by video-conference.

FOR THE ABOVE REASONS, THE CHAMBER

AUTHORIZES the taking of the testimony of Witness KX-38 and Witness KVB-46 by video-conference;

INSTRUCTS the Registry, in consultation with the parties, to make all necessary arrangements, in respect of the testimony of Witness KX-38 and Witness KVB-46 by video-conference and to videotape the testimony for possible future reference by the Chamber.

Arusha, 5 October 2006


Erik Møse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁵ Motion, Annex D.