



ICTR-98-41-T
17-10-2006
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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(31085-31083)

ORIGINAL: ENGLISH

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TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 17 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 CERTIFICATION OF APPEAL OF ORAL DECISIONS ON THE
SCOPE OF CROSS-EXAMINATION OF JEAN KAMBANDA

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
Gershon Otachi Bw'Omanwa

6/11

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 “Application for Certification to Appeal Oral Decisions of 12 and 13 July 2006”, etc., filed by the Bagosora Defence on 19 July 2006;

CONSIDERING the Prosecution Response, filed on 20 July 2006; and the “Request for Timely Decision”, filed by the Bagosora Defence on 5 October 2006;

HEREBY DECIDES the application.

INTRODUCTION

1. On 11, 12 and 13 July 2006, Jean Kambanda, a former Prime Minister of Rwanda who is serving a life sentence of this Tribunal for his role in events in Rwanda between April and July 1994, testified as a witness for Colonel Bagosora. During the witness’s cross-examination, the Prosecution posed certain questions to which the Defence objected as going beyond the proper scope of cross-examination. After a number of oral rulings, the Chamber suspended the witness’s testimony on 13 July 2006, indicating that this was “a matter that should be dealt with in a written decision” and inviting the Defence to file additional written observations by close of business” the following day.¹ The three Accused other than Bagosora filed such submissions as requested and, on 11 September 2006, the Chamber granted their request for exclusion of testimony in respect of all but one of the challenged areas.²

2. The present application was filed on 19 July 2006, six days after the Chamber had invited written submissions concerning the correctness of its oral rulings. Rather than arguing the merits of the Chamber’s oral decisions, the Bagosora Defence asks for leave to litigate these decisions before the Appeals Chamber.

3. The Chamber’s written decision of 11 September 2006 has rendered the present application moot in respect of “movement of arms”, “Pauline Nyiramasuhuko”, and “Kabiligi”, either by excluding the evidence or offering additional reasons.³ The areas of questioning which remain for consideration are: “civil defence”; “the death of Prime Minister Agathe and the Belgian peacekeepers”; and alleged involvement by soldiers in killings and rapes at Kabgayi.⁴

DELIBERATIONS

4. Leave to file an interlocutory appeal may be granted under Rule 73 (B) of the Rules of Procedure and Evidence where it “involves an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial” and where “immediate resolution may materially advance the proceedings”.

¹ T. 13 July 2006 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 Application, paras. 15-18, 19-24, 36-40.

⁴ *Id.* paras. 12-14, 25-32, 33-35.

5. The proposed appeal would challenge the Chamber's application of Rule 90 (G) to three narrowly-defined categories of testimony. The first category, concerning the alleged existence of a civil defence program in Rwanda, has been narrowed even further by the Chamber's written decision of 11 September 2006, which excluded any testimony to the effect that the Accused were "involved in a national scheme to supply a national civil defence program" with arms. This testimony substantially overlaps with evidence already heard by the Chamber during the Prosecution's case and, in any event, does not implicate the Accused in any particular conduct.⁵ The second category concerns responsibility for the death of the Prime Minister on 7 April 1994. The witness repeatedly denied knowing who was responsible for the death of the Prime Minister.⁶ The third category is testimony concerning criminal acts by soldiers at Kabgayi. This testimony substantially repeats evidence heard during the Prosecution case.⁷


6. The testimony of the witness in these three categories, viewed individually or cumulatively, has not been shown to be of sufficient importance to significantly affect the fair conduct of the trial or its outcome.⁸ This condition for granting an interlocutory appeal is, therefore, not satisfied.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the application.

Arusha, 17 October 2006


Erik Mose
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁵ *Bagosora et al.*, Decision on Severance or Exclusion of Evidence Based on Prejudice Arising from Testimony of Jean Kambanda (TC), 11 September 2006, para. 10. Examples of civil defence testimony heard during the case-in-chief: T. 4 February 2004 p. 22 (Beardsley); T. 1 June 2004 pp. 64-66 (Witness A).

⁶ T. 12 July 2006 pp. 73, 76.

⁷ E.g. Exhibit P274 (92 bis statement of Witness DAZ); Exhibit P259 (92 bis statement of Witness UT); T. 11 June 2004 pp. 18-19 (Witness XXY).

⁸ See e.g. *Bagosora et al.*, Decision on Bagosora Request for Certification Concerning Additional Questioning of Witness LE-1 (TC), para. 7 ("Reversal of the present decision, and recalling the witness for further cross-examination by the Defence, would be of marginal significance to the outcome or conduct of the present trial").