



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
19-10-2006
(31101-31099)

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S. MUSA

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 19 October 2006

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No.: ICTR-98-41-T

2006 OCT 19 1 A.D. 24
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DECISION ON VIDEO-CONFERENCE TESTIMONY OF KABILIGI
WITNESSES YUL-39 AND LAX-23 AND TO HEAR TESTIMONY IN CLOSED
SESSION

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

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

BEING SEIZED OF the “Motion to Request the Testimony of Witnesses YUL-39 and LAX-23 to be Heard Via Video Link and the Entirety of the Testimony of Witness LAX-23 in Closed Session”, filed by the Kabiligi Defence on 12 October 2006;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Kabiligi Defence requests that Witness YUL-39 and Witness LAX-23 be permitted to give their testimony by video-conference. Both witnesses fear that their security would be placed at risk by travelling out of their countries of current residence, as they were both high-profile officials in the former Government of Rwanda. They believe that they may be arrested while in transit, or targeted for assassination.

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 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

3. Witness YUL-39 refuses to travel to Arusha on the basis that he may be the object of an international arrest warrant issued at the behest of the Government of Rwanda. He believes that he could be subject to arrest while on the territory of a country through which he must transit between his country of current residence and Tanzania. Materials in the confidential and *ex parte* annex to the motion demonstrate not only that the witness is genuinely afraid of this possibility, but that the fear may be well-founded. The witness is purportedly able to describe the duties and functions of the office of G3, and to directly contradict the testimony of Prosecution Witness XXQ regarding events in Ruhengeri.

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 Video-Conference Testimony of Kabiligi Witnesses KX-38 and KVB-46 (TC), 5 October 2006, para. 3; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4; *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video Link (TC), 8 October 2004, para. 6.

³ *Bagosora et al.*, Decision on Video-Conference Testimony of Kabiligi Witnesses KX-38 and KVB-46 (TC), 5 October 2006, para. 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.

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4. Witness LAX-23 held a prominent position in the civil service of the former Government of Rwanda. The motion asserts that the witness believes that his name is amongst those on a list of persons to be assassinated. The list includes the name of at least one person who was allegedly assassinated in Kenya in 1998.⁴ The witness is said to have direct knowledge of the date of the Accused's return to Rwanda in April 1994 and, accordingly, can provide important alibi evidence.

5. The Defence has established that both witnesses refuse to travel to Arusha on the basis of genuinely-held fears. Although more direct evidence of Witness LAX-23's views would have been preferable, the Chamber is willing in the present case to accept the assertions in the Defence motion as an accurate reflection of the state of mind of these witnesses. Both 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.

6. Requests to hear the entirety of a witness's testimony in closed session are usually decided orally after the Chamber has had the opportunity to hear the reasons for the witness's sensitivity.⁵ The Chamber has generally adopted a liberal approach to such concerns, and has exercised caution in protecting witness's identities.⁶ No order in respect of hearing Witness LAX-23 entirely in closed session shall be made until the Chamber has had the opportunity to hear from the witness at the beginning of his testimony.

FOR THE ABOVE REASONS, THE CHAMBER

AUTHORIZES the taking of the testimony of Witness YUL-39 and Witness LAX-23 by video-conference;

INSTRUCTS the Registry, in consultation with the parties, to make all necessary arrangements, in respect of the testimony of Witness YUL-39 and Witness LAX-23 by video-conference and to videotape the testimony for possible future reference by the Chamber;

DENIES as premature the request to hear the entirety of Witness LAX-23's testimony in closed session.

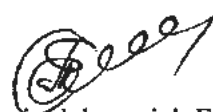
Arusha, 19 October 2006



Erik Møse
Presiding Judge



Jai Ram Reddy
A.A. Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁴ Motion, para. 26.

⁵ *Bagosora et al.*, Decision on Requests to Hear Testimony in Closed Session (TC), 18 October 2006, para. 1.

⁶ E.g. T. 3 October pp. 15-18 (Witness LCH-1) 16-50 (Witness LXX-1).