



ICTR-98-42-T
30-08-2007
(1275 - 1273)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 30 August 2007

Judge
2007 AUG 30 P 14:14

The PROSECUTOR v. Joseph KANYABASHI
Case No. ICTR-96-15-T
Joint Case No. ICTR-98-42-T

**DECISION ON JOSEPH KANYABASHI' S EXTREMELY URGENT MOTION FOR
EXTENSION OF TRANSFER OF WITNESSES D-2-5-W AND D-2-11-D**

Office of the Prosecutor

Ms. Silvana Arbia
Ms. Adelaide Whest
Ms. Holo Makwaia
Ms. Madeleine Schwartz
Ms. Althea Alexis Windsor
Ms. Astou Mbow, Case Manager

Defence Counsel for Kanyabashi

Mr. Michel Marchand
Ms. Simone Santerre

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the "*Requête extrêmement urgente aux fins de prolongation de l'ordonnance de transfert de deux témoins détenus*" filed on 22 August 2007 (the "Motion");

CONSIDERING the:

- i) Prosecutor's Response to the "*Requête extrêmement urgente aux fins de prolongation de l'ordonnance de transfert de deux témoins détenus en vertu de l'article 90bis du Règlement de procédure et de preuve*" filed on 27 August 2007 ("Prosecution's Response");
- ii) "*Réplique de Joseph Kanyabashi à la réponse du Procureur concernant la requête extrêmement urgente aux fins de prolongation de l'ordonnance de transfert de deux témoins détenus*" filed on 29 August 2007 (Kanyabashi's Reply);

NOTING the attachments to Kanyabashi's Reply:

- i) *Lettre de Monsieur Karugarama Tharcisse, Ministre de la Justice de la République du Rwanda adressée à Monsieur le Procureur Général de la République, no. 0396/11/01/07, du 27 août 2007*;
- ii) *Lettre de Monsieur Ngoga Martin, Procureur Général de la République adressée à Monsieur Karugarama, Ministre de la Justice de la République du Rwanda, du 28 août 2007*.

RECALLING the "Order for the Transfer of Defence Witnesses from Rwanda" issued on 22 June 2007 (the "22 June 2007 Order");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules") in particular Rule 90bis of the Rules;

NOW DECIDES the Motion pursuant to Rule 73 of the Rules, on the basis of the written briefs only, as filed by the Parties.

INTRODUCTION

1. On 22 June 2007, upon the Defence request, the Chamber ordered the temporary transfer of Witnesses D-2-5-W and D-2-11-D from Rwanda to the United Nations Detention Facility [the UNDF] in Arusha for their testimony in the instant case. The Chamber further ordered that the duration of this temporary transfer should not go beyond 31 August 2007 and observed that the timeframe specified may not be sufficient to hear the two witnesses and reminded the Defence to keep this matter under review.¹

2. On 22 August 2007, whereas none of these witnesses had started testifying, the Defence filed a motion to extend their temporary transfer until 31 October 2007. The Prosecution does not oppose the motion.

¹ "Order for the Transfer of Defence Witnesses from Rwanda". 22 June 2007.

HAVING DELIBERATED,

3. Pursuant to Rule 90bis (A) of the Rules, "[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal". Rule 90bis (B) requires prior verification of two conditions for such an order:

- (i) The presence of 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;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

4. The Chamber notes the correspondence dated 28 August 2007 from the Attorney General of Rwanda confirming the availability of Witnesses D-2-5-W and D-2-11-D for the new period running until 31 October 2007.² The Chamber is therefore satisfied that the conditions under Rule 90bis (B) are met and grants the Motion accordingly.

FOR THE ABOVE REASONS, THE TRIBUNAL,

GRANTS the Motion, and

ORDERS that detained Witnesses D-2-5-W and D-2-11-D temporary transfer in Arusha be extended until 31 October 2007 at the latest.

REITERATES the terms of the Order of 22 June 2007 in all other respects.

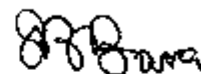
Arusha, 30 August 2007



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]

² Attachment II: *Lettre de Monsieur Ngoga Martin, Procureur Général de la République adressée à Monsieur Karugaran z, Ministre de la Justice de la République du Rwanda, du 28 août 2007.*