



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-01-70-T
25-09-2007
(3356-3353)

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 24 September 2007

THE PROSECUTOR

v.

Emmanuel RUKUNDO

Case No. ICTR-2001-70-T

Emmanuel RUKUNDO
Prosecutor

DECISION ON DEFENCE MOTION FOR SUBPOENA FOR WITNESS GSC

Office of the Prosecutor:

Mr William T. Egbé
Mr Sulaiman Khan
Ms Veronic Wright
Mr Patrick Gabaake
Mr Disengi Mugeyo
Ms Amina Ibrahim

Counsel for the Defence:

Ms Aïcha Condé
Ms Allison Turner

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INTRODUCTION

1. The trial against [Firmannu] Rukundo commenced on 15 November 2006. The Prosecution closed its case on 12 March 2007. The Defence commenced its case on 9 July 2007.

2. On 13 September 2007, the Defence filed the present motion¹ confidentially, requesting the Chamber to issue a subpoena to compel Witness GSC to testify before the Chamber. The Defence claims that it has made reasonable efforts to secure the voluntary testimony of the witness but they were unsuccessful.² The Defence provides, in Annexes to its motion, its correspondences on the issue with the witness. The Defence further submits that the testimony of Witness GSC is material to the issues in the case,³ and states that the testimony of the witness is necessary for a fair trial in light of the impossibility of finding a substitute witness for Witness GSC.⁴ The Prosecution, in its confidential response filed on 18 September 2007,⁵ opposes the Defence request since it had failed to show that the potential testimony of the witness was sufficiently material to justify the issue of an order for a subpoena.⁶ The Defence, on 19 September 2007, filed its confidential reply indicating in greater detail the essential nature of the testimony to the allegations against the Accused.⁷

DELIBERATIONS

3. The Chamber recalls its Decision of 21 September 2007,⁸ in which it laid down the appropriate standard for the issue of an order for subpoena.

Pursuant to Rule 54, a Judge or a Chamber may, at the request of either party or *proprio motu*, issue subpoenas as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial. According to the Tribunal's jurisprudence, the applicant seeking a subpoena must make a certain evidentiary showing of the need for a subpoena. A subpoena order to compel the attendance may be issued in particular cases where the requesting party shows that it has made reasonable attempts to obtain the voluntary cooperation of the witness, and that the witness's testimony can materially assist its case with respect to clearly identified issues in the trial. A subpoena may also be issued when information sought cannot reasonably be obtained elsewhere and the witness's testimony is in the interests of the conduct and fairness of the trial.⁹ Further, subpoenas should not be issued lightly, for

¹ Requête strictement confidentielle et en extrême urgence aux fins de citation à comparaître du témoin (GSC), filed by the Defence on 13 September 2007 (Defence Motion).
² Defence Motion, paras. 8-12.
³ Defence Motion, paras. 18-21; Conclusions en réplique à la réponse du Procureur aux fins de citation du témoin (GSC), filed by the Defence on 19 September 2007 (Defence Reply), paras. 6-9, 16, 19, 21 and 25.
⁴ Defence Motion, paras. 21-23.
⁵ Prosecution's Confidential Response to the Defence Urgent & Confidential Motion for a Subpoena against Witness GSC, filed on 18 September 2007 (Prosecution Response).
⁶ Prosecution Response, paras. 8-16.
⁷ Defence Reply.
⁸ Decision on Defence Motion for Subpoena and Transfer of Detained Witness SJA (TC), 21 September 2007, para. 3.
⁹ See *Prosecutor v. Kistić*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10; *Prosecutor v. Hadžović*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004 (*Hadžović* Decision), para. 6; *Prosecutor v. Kordić and Čaprović et al.*, Case No. KTR-00-56-T, Decision on the Prosecutor's Motion for Subpoena (TC), 6 October 2006, para. 13; *Prosecutor v. Bogosora et al.*, Case No. ICTR-98-41-T, Decision on Request for a Subpoena (TC), 11 September 2006, para. 7; *Prosecutor v. Bogosora et al.*, Case No. ICTR-98-41-T, Decision on a Request for Subpoena for Major Jacques Biot (TC).

they involve the use of coercive powers and may lead to the imposition of criminal sanctions.¹⁰

4. The Chamber notes from the Defence submissions and the summary provided in the Pre Defence Brief that Witness GSC will refute allegations against the Accused on events at the Kabgayi Major Seminary, that he was an eye witness to the taking away of clergy men and women from the Seminary on 24 May 1994, and that he knew the Accused. The Chamber therefore finds that this potential testimony is sufficiently material to the case and particularly to the allegations in paragraphs 19 and 29 of the Indictment that the Accused was, among other allegations, responsible for the taking away of twenty Tutsi clergy men and women from the Seminary.

5. The Defence submits that Witness GSC had initially agreed to testify in the case, but had as recently as 1 September 2007 indicated that it was no longer possible for him to testify given his recent appointment to a new position of responsibility. To this effect, the Defence attaches e-mail correspondence with the witness¹¹, indicating his refusal to testify despite the Defence's attempts to convince him to testify. The Chamber is satisfied, based on the information contained in the Annexes that the Defence has adequately shown that it had made reasonable efforts to obtain the voluntary testimony of the witness, which were unsuccessful.

6. The Chamber further finds that the witness's testimony is necessary and appropriate for the conduct and fairness of the trial, since the Defence submits that he is the only witness who was present through the events at the Kabgayi Major Seminary. The Chamber is therefore convinced that such direct testimony from an eye witness may not be available from another source.

7. The Chamber therefore finds that there are sufficient grounds for the issue of a subpoena order for Witness GSC.

14 July 2006, para. 2; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-1, Decision on Nzirorera's *Ex Parte* Motion for Order for Interview of Defence Witnesses NZ1, NZ2 and NZ3 (TC), 12 July 2006, paras. 9-10; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for Subpoenas (TC), 4 May 2005, para. 2; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motion Requesting Subpoenas to Compel the Attendance of Defence Witnesses DK32, DK39, DK51, DK52, DK311 and DM24 (TC), 26 April 2005, para. 3.

¹⁰ *Prosecutor v. Brdjanin and Talic*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal (AC), 11 December 2002, para. 31; *Halilovic* Decision (AC), para. 6.

¹¹ Defence Motion, Annexes 1, 2 and 3.



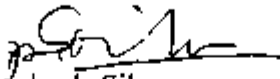
FOR THE ABOVE REASONS, THE CHAMBER

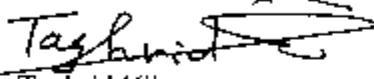
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GRANTS the Defence Motion; and

INSTRUCTS the Registrar to prepare a subpoena in the name of the witness, in accordance with this decision, and to serve it on the witness, through appropriate channels in the country of residence of the witness, requiring his appearance before this Chamber to testify in the present case.

Arusha, 24 September 2007


Aoko de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

