



UNITED NATIONS
NATIONS UNIES

ICTR-02-78-1
22-02-2008
(1373-1371)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER DESIGNATED UNDER RULE 11 *BIS*

Before Judges: Erik Mose, presiding
Sergei Alekseevich Egorov
Florence Rita Arrey

Registrar: Adama Dieng

Date: 22 February 2008

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-I

2008 FEB 22 1P 4:30
JUDICIAL RECORDS ARCHIVES

DECISION ON *AMICUS CURIAE* REQUEST BY IBUKA AND AVEGA

Rule 74 of the Rules of Procedure and Evidence

The Prosecution

Hassan Bubacar Jallow
Bongani Majola
Silvana Arbia
Alex Obote-Odora
Richard Karegyesa
Georges Mugwanya
Inneke Onsea
François Nsanzuwera
Florida Kabasinga

The Defence

Ernest Midagu Bahati
Camille Yuma

6h

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as a Chamber designated under Rule 11 *bis*, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF a Request for Permission to File an *Amicus Curiae* Brief by Ibuka and Avega, filed on 4 February 2008;

NOTING the Defence Response, filed on 7 February 2008, the Prosecution Response, filed on 8 February 2008, and the Defence Reply, filed on 13 February 2008.

HEREBY DECIDES the motion.

INTRODUCTION

1. On 7 September 2007, the Prosecution requested the transfer of the Accused for trial in Rwanda under Rule 11 *bis* of the Rules of Procedure and Evidence. The Chamber has subsequently made decisions concerning several requests for *amicus curiae* status.¹ The current application seeks *amicus curiae* status for Ibuka and Avega on the basis of the particular knowledge they possess as the genocide survivors' organisations.² The Defence opposes the Request on the basis that Ibuka and Avega would not be objective in their submissions, while the Prosecution does not oppose the Request.³

DELIBERATIONS

2. Rule 74 provides that a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organisation or person to appear before it and make submissions on any issue specified by the Chamber.

3. Any submission by a potential *amicus curiae* must be relevant.⁴ Rule 11 *bis* (C) provides that the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned. It follows that submissions by an organisation with knowledge relating the capacity of the Rwandan legal system to ensure a fair trial are relevant.

4. The burden falls on the potential *amicus curiae* to show that it has sufficient expertise to provide submissions that are relevant to the work of the Chamber. Ibuka and Avega state that they are genocide survivors' organisations, without any further elaboration as to how this would make them knowledgeable about the ability of the Rwandan legal system to ensure fair trials. The application mentions many issues that the organisations would like to address without explaining how these matters will throw light on the operation of the Rwandan legal system.⁵ It should be added that the present request differs from the application of the Kigali

¹ *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 9 November 2007; Decision on Defence Request to Grant *Amicus Curiae* Status to Four Non-Governmental Organisations (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the Organisation of Defence Counsel (ADAD) (TC), 22 February 2008; Decision on *Amicus Curiae* Request of the International Criminal Defence Attorneys Association (ICDAA) (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the Kigali Bar Association (TC), 22 February 2008.

² Request, p. 3.

³ Prosecution Response, p. 2; Defence Reply, p. 3.

⁴ *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Decision on an Application by African Concern for Leave to Appear as *Amicus Curiae* (TC), 17 March 1999, para. 13.

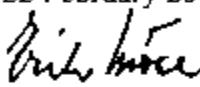
⁵ Request, p. 3. See also *Prosecutor v. Munyakazi*, Case No. ICTR-97-36-I, Decision on the Request by Ibuka and Avega for Leave to Appear as *Amicus Curiae*, 13 February 2008, p. 3 which also relied on this ground, among others, for rejecting a similar request.

Bar Association, which has knowledge of the Rwandan legal system, and whose request for *amicus curiae* status has been granted by the Chamber.⁶

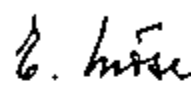
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the request.

Arusha, 22 February 2008


Erik Mose
Presiding Judge


Sergei Alekseevich Egorov
Judge


Florence Rita Arrey
p.p. Judge

[Seal of the Tribunal]



⁶ *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on *Amicus Curiae* Request by the Kigali Bar Association (TC), 22 February 2008.