



ICTR-01-69-T
12-06-2008
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2962
van

(2962 - 2960)

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Mose, presiding
Judge Sergei Alekseyevich Ignorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 12 June 2008

THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Case No. ICTR-2001-69-I

DECISION ON DEFENCE MOTION TO TRANSFER DETAINED WITNESS FMR92

The Prosecution

Wallace Kapaya
Sylver Ntukamazina
Brian Wallace
Iskandar Ismail
Jane Mukangira

The Defence

Emmanuel Alit
David Hooper

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Mose, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Defence Motion to Transfer a Detained Witness, filed on 11 June 2008;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence requests the transfer of Witness EMR92, who is detained in Rwanda. It submits that the requirements for transfer as set out in Rule 90 *bis* of the Rules of Procedure and Evidence have been met. A letter of 9 June 2008 from the Rwandan Ministry of Justice confirms that the witness is available to testify.¹ The Prosecution has not responded to the motion.

DELIBERATIONS

2. Pursuant to Rule 90 *bis* (A), a Trial Chamber may transfer any detained person, whose personal appearance as a witness is required, temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Chamber. Such a transfer order may only be issued by the Chamber if the following conditions, set out in Rule 90 *bis* (B), have been met:

- (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.

3. The Chamber is satisfied that the letter from the Rwandan Ministry of Justice is sufficient in relation to the requirements of Rule 90 *bis* (B).² The Defence has requested that Witness EMR92 be transferred in the week commencing on 30 June 2008. The Chamber considers the appropriate period under Rule 90 *bis* (A) to be from 16 June to 4 July 2008, based on information through the Witness Protection Service Section that the witness would also be available for this period. In order to ensure a smooth progress of the trial, the witness should preferably testify in the week commencing on 16 June 2008.

FOR THE ABOVE REASONS, THE CHAMBER

ORDERS, pursuant to Rule 90 *bis* of the Rules, that the witness be transferred to the Detention Unit in Arusha in the period commencing on 16 June 2008 and be returned to Rwanda no later than 4 July 2008;

¹ "Requête de la Défense aux fins de transfert d'un témoin détenu" etc. parr. 5.

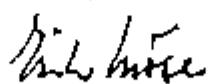
² *Ntengzmama*, Decision on Prosecution Urgent Motion for the Transfer of Detained Witness BXN (TC), 17 January 2008; *Bagavant et al.*, Order for Transfer of Prosecution Witnesses AI and AOM (TC), 3 September 2004; Order for Transfer of Witness AAA (TC), 25 May 2004; Decision on the Prosecution's Request for the Transfer of Detained Witnesses (TC), 4 June 2003.

REQUESTS the Government of Rwanda to comply with this order and to arrange for the transfer in cooperation with the Registrar and the Tanzanian Government;

INSTRUCTS the Registrar to:

- a) transmit this decision to the Governments of Rwanda and Tanzania;
- b) ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;
- c) remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the temporary detention and, with the shortest delay, inform the Trial Chamber of any such change.

Arusha, 12 June 2008



Erik Mose
Presiding Judge



Sergei Alekseevich Figerov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]