

ICTR-02-78-1

19-06-2008

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(1502-1500)

OR: ENG

TRIAL CHAMBER DESIGNATED UNDER RULE 11 B/5

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

Registrar: Adama Dieng

Date: 19 June 2008

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-R11bis

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DECISION ON DEFENCE MOTION TO ADMIT ADDITIONAL EVIDENCE

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

The Defence
Ernest Midagu Bahati
Camille Yuma

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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 Defence motion to admit additional evidence, filed on 25 April 2008.

NOTING the Prosecution Response, filed on 30 April 2008;

HEREBY DECIDES the Motion.

INTRODUCTION

1. On 7 September 2007, the Prosecution filed a request to transfer Gaspard Kanyarukiga's case to Rwanda under Rule 11 *bis* of the Rules of Procedure and Evidence. The Defence opposed referral. On 6 June 2008, the Chamber denied the request.¹ Before the Chamber rendered its decision, the Defence filed the present motion to admit additional evidence in support of its response to the Prosecution request. Appended to the motion was an unofficial translation of an arrest warrant, issued by a Spanish judge on 6 February 2008, against certain civil and military persons of authority for acts allegedly committed in 1994.

2. The Defence argues that the persons mentioned in the Spanish arrest warrant have considerable influence in the administration of justice in Rwanda. The document therefore reinforces the Defence arguments about the lack of impartiality of the judiciary. Reference is made to Rule 89 (A) and (C) as well as Rule 92 *bis* of the Rules. The Prosecution asks the Chamber to dismiss the motion as the Defence assertion is general, unsubstantiated and irrelevant to the question of whether Kanyarukiga will receive a fair trial in Rwanda. The allegations have not been proved or confirmed by a court ruling.²

DELIBERATIONS

3. The Chamber's decision under Rule 11 *bis* was rendered following written submissions from the parties, as well as from the Republic of Rwanda, Human Rights Watch, the International Criminal Defence Attorneys Association and the Kigali Bar Association, which were granted *amicus curiae* status. The Prosecution appended 13 documents to its request, whereas the Defence response had 28 annexes. The purpose of the present motion was simply to add an additional document to the previous annexes, which already formed part of the file without any authorisation from the Chamber under the Rules. The document was filed before the Chamber's decision, which denied the Prosecution request. Under these circumstances, the Defence motion is moot.

¹ Prosecutor's Request for the Referral of the Case of Gaspard Kanyarukiga to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 7 September 2007; "Réponse de la Défense à la requête du Procureur portant transfert de l'Accusé Gaspard Kanyarukiga au Rwanda", 16 November 2007; Decision on Prosecutor's Request for Referral to the Republic of Rwanda (TC), 6 June 2008.

² "Requête de la Défense tendant à obtenir le versement au dossier du transfert du client d'un élément supplémentaire de preuve," etc, filed on 25 April 2008; Prosecution Response, filed on 30 April 2008.

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FOR THE ABOVE REASONS, THE CHAMBER

DECLARES the motion moot.

Arusha, 19 June 2008.



Erik Mose

Presiding Judge



Sergei Alekseevich Egorov

Judge



Florence Rita Arrey

Judge

[Seal of the Tribunal]

