



ICTR-04-81-I
28-05-2009
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(6521-6519)

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TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 28 May 2009

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THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-I

DECISION ON DEFENCE MOTION FOR VIDEO-LINK TESTIMONY

The Prosecution
Ifeoma Ojemeni-Okali
Simba Mawere
Christiana Fomenky

The Defence
Lennox Hinds
Cainnech Lussia-Berdou

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

BEING SEIZED OF the Defence motion for video-link testimony, filed on 20 May 2009;

HEREBY DECIDES the motion.

INTRODUCTION

1. Defence Witnesses KAM and KAF are residing in Europe. They refuse to travel to the seat of the Tribunal in Arusha, Tanzania, due to security concerns. The Defence requests that they be allowed to testify via video-link from Europe.¹ The Prosecution does not oppose the motion.²

DELIBERATIONS

2. Testimony by video-link may be ordered pursuant to Rules 54 and 71 (D) of the Rules of Procedure and Evidence on the basis that it is in the interests of justice. This depends on the importance of the testimony, the witness's inability or unwillingness to attend, and whether a good reason has been adduced for that inability or unwillingness.³

3. According to the Defence, Witnesses KAM and KAF are important to its case. Witness KAM will give evidence that Setako assisted her in Kigali, Rwanda from 7 to 11 April 1994. On the latter date, he informed her that he was going abroad the next day on an official mission. Her evidence therefore goes to Setako's alibi.⁴ Witness KAF, a former officer in the Rwandan Armed Forces, will testify about how weapons were procured and distributed to soldiers, gendarmes and some civilians, and explain that Setako had no connection to weapons procurement and distribution. The Defence submits that the testimony is relevant to Setako's alibi and his alleged role as a liaison between the *Interahamwe* and the Ministry of Defence.⁵

4. The Chamber considers the evidence by Witness KAM relating to Setako's alibi as important to the Defence case. It is not convinced that the testimony of Witness KAF, as summarised in the motion, will address the alibi, but accepts that it may contradict incriminating Prosecution evidence about his role as a purported liaison and therefore is of potential importance.

5. Both witnesses are willing to testify but refuse to travel to Arusha based on fears for their personal safety. Witness KAM's husband was assassinated after the events in 1994.⁶ Witness KAF has security concerns as a former senior officer in the Rwandan Armed Forces. For reasons related to his former position he is unwilling to undertake foreign travel.⁷ The

¹ "Setako Defence Motion Requesting Testimony of Witnesses KAM, KAE and KAF Via Video Link", etc., filed on 20 May 2009. On 26 May 2009, the Defence indicated that it will no longer call Witness KAE.

² E-mail from the Prosecution to the Court Management Section, 25 May 2009.

³ *Prosecutor v. Tharcisse Renzaho*, Decision on Defence Request for Video-Link Testimony (TC), 27 June 2007, para. 2; *Prosecutor v. Bagosora et al.*, Decision on Testimony of Witness Amadou Deme by Video-link (TC), 29 August 2006, para. 3; Decision on Testimony by Video-conference (TC), 20 December 2004, para. 4; Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004, para. 6.

⁴ Motion, paras. 9-10.

⁵ Motion, paras. 17-18.

⁶ Motion, para. 11.

⁷ Motion, paras. 19 and Annex B (Affidavit of Setako Defence Investigator).

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Defence has made repeated efforts to convince the two witnesses to give evidence in Arusha, but in vain.⁸

6. The Chamber finds it clear that Witness KAM and KAF are unwilling to testify in Arusha based on genuinely-held fears for their security.⁹ It is therefore in the interests of justice to grant the request for video-link transmission in view of the alleged significance of their testimony. Based on information provided by the Defence and the Registry, the hearing should take place over two days in the week of 22 to 26 June 2009.

FOR THE ABOVE REASONS, THE CHAMBER

AUTHORISES the taking of the testimony of Witnesses KAM and KAF by video-link; and

INSTRUCTS the Registrar, in consultation with the parties, to make all necessary arrangements in respect of the testimony of Witnesses KAM and KAF by video-link, and to videotape the testimonies for possible future reference by the Chamber.

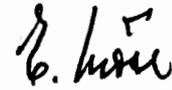
Arusha, 28 May 2009



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge



[Seal of the Tribunal]



⁸ Motion, paras. 11 and 19.

⁹ See *Prosecutor v. Bagosora et al.*, Decision on Video-conference Testimony of Kabiligi Witnesses YUL-39 and LAX-23 and to Hear Testimony in Closed Session (TC), 19 October 2006, para. 5, and footnote 3 above.