

ICTR-02-78-I
18-08-09
(3936-3934)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

Before Judges: Taghrid Hikmet, Presiding
Seon Ki Park
Joseph Masanhe

Registrar: Adama Dieng

Date: 18 August 2009

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-I

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**INTERIM ORDER CONCERNING THE DEFENCE REQUEST FOR RULE 68
DISCLOSURE**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Holo Makwaia
Althea Alexis-Windsor
Mara Tidiane
Lasana Dumbuya

Defence Counsel:

David Jacobs
Claver Sindayigaya
Marc Nerenberg

Handwritten signature: "Park"

INTRODUCTION

1. The Accused, Gaspard Kanyarukiga, was arrested in South Africa on 19 July 2004.¹
2. The trial in this case is scheduled to commence on 31 August 2009.²
3. On 7 August 2009, the Defence filed a motion pursuant to Rule 68(A) of the Rules of Procedure and Evidence (“the Rules”), requesting that the Prosecution disclose and return exculpatory documents seized from the Accused at the time of his arrest.³ The Defence contends that, at the time of his arrest, the Accused possessed three laissez-passers relevant to the dates mentioned in the indictment and that these documents are currently in the custody of the Prosecution.⁴
4. On 11 August 2009, the Prosecution filed a response, arguing that it does not have custody of the laissez-passers requested by the Defence.⁵ The Prosecution submits that it is not required under Rule 68(A) to disclose material of which it does not have knowledge or possession.⁶
5. On 14 August 2009, the Defence filed a reply, arguing that the Prosecution has failed to respond to the issues raised in their Motion. The Defence further submits that the Prosecution has misconstrued the language of Rule 68(A) and that the Accused has satisfied his burden of proof, as set forth in the Tribunal’s jurisprudence.⁷

DELIBERATIONS

6. Having considered the submissions of the Parties, the Chamber finds that there is insufficient information upon which to make a reasoned Decision on the issue at hand. The Chamber also notes that it is in the interests of justice to resolve this issue as quickly as possible.

¹ See Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, filed on 7 August 2009.

² *Prosecutor v Kanyarukiga*, Case No ICTR-2002-78-I, Scheduling Order (TC), 7 July 2009.

³ Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, filed on 7 August 2009.

⁴ Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, filed on 7 August 2009, paras. 2, 4-6.

⁵ Prosecutor’s Response to the Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, filed on 11 August 2009.

⁶ Prosecutor’s Response to the Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, filed on 11 August 2009, para. 2.

⁷ Defence Reply to the Prosecutor’s Response to the Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, filed on 14 August 2009.

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FOR THE FOREGOING REASONS, the Chamber

ORDERS the Registry to serve this Interim Order on the Prosecutor, for his immediate action.

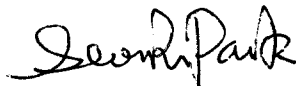
ORDERS the Prosecutor to provide the Chamber with the following information no later than 12:00 noon, Friday, 21 August 2009:

- i) A detailed account of the events of 19 July 2004, including the seizure and cataloguing of the Accused's possessions;
- ii) A detailed account of the events of 10 September 2004, including the production and signature of the second, more detailed inventory list and the annotations allegedly made by Accused on that list;
- iii) An explanation of the discrepancies between the two inventory lists, including, *inter alia*, the appearance of "medicines" and "checked pattern plastic bag" on the first list but not the second;
- iv) The names and present locations of all OTP representatives present during the arrest of the Accused and the seizure and cataloguing of the Accused's possessions on 19 July 2004;
- v) The names and present locations of all OTP representatives present during the production and signature of the second inventory list, dated 10 September 2004;
- vi) The chain of custody of the Accused's possessions since the time of his arrest;
- vii) Further information regarding the nature and extent of the Prosecution's search for the requested materials.

REMINDS the Defence of its right, pursuant to Rule 66(B), to inspect books, documents, photographs and tangible objects in the custody or control of the Prosecutor, which are material to the preparation of the Defence.

Arusha, 18 August 2009

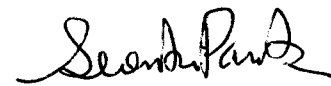
[read and approved by]



Taghrid Hikmet
Presiding Judge
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of signature]




[read and approved by]



Joseph Masanche
Judge
[absent at the time
of signature]