



UNITED NATIONS  
NATIONS UNIES

ICTR-97-36A-I  
19-08-2009  
(1066 - 1064)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

1066  
LUAH

OR: ENG

**TRIAL CHAMBER I**

**Before Judges:** Florence Rita Arrey, Presiding  
Mparany Mamy Richard Rajohnson  
Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 19 August 2009

**THE PROSECUTOR**

v.

**Yussuf MUNYAKAZI**

*Case No. ICTR-97-36A-T*

JUDICIAL  
PROCEEDINGS  
19 AUG 2009  
ALL-09

**DECISION ON THE DEFENCE'S CONFIDENTIAL AND URGENT MOTION FOR  
THE TRANSFER OF WITNESS ELB FROM RWANDA**

*Rule 90 bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Richard Karegyesa  
Segun Jegede  
Didace Nyirinkwaya  
Dennis Mabura

**Counsel for the Defence**

Jwani Mwaikusa  
Barnabé Nekuie  
Etienne Mutabazi  
Malien Habyarimana  
André Nteziriraza

## Introduction

1. On 10 August 2009, the Defence filed a motion requesting that the Chamber issue an order for the transfer of Defence Witness ELB from Cyangugu Prison in Rwanda to the custody of the International Criminal Tribunal for Rwanda (ICTR) in Arusha so that he may testify in the current proceedings, pursuant to Article 28 of the Statute of the International Criminal Tribunal for Rwanda ("Statute" hereinafter). The Defence notes that it anticipates that Witness ELB will be among the first of its witnesses to testify. It also states that it has already received permission from the Prosecutor General of the Republic of Rwanda to visit the prisoner at Cyangugu prison.<sup>1</sup>

2. The Prosecution has not filed a response to the Motion.

## Deliberations

3. The Trial Chamber considers that the Defence's twin contentions that "no authorisation is required from the Rwandan judicial authorities for Witness ELB to be extracted from the Cyangugu prison" and that "witness ELB" does not fall under Rule 90 *bis* of the Rules of Procedure and Evidence", are both erroneous.<sup>2</sup>

4. Article 28 of the Statute states as follows:

### Article 28: Cooperation and Judicial Assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued

by a Trial Chamber, including but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

<sup>1</sup> Defence confidential and urgent motion for the transfer of witness ELB from Rwanda (Art 28 of the Statute) ("Motion"), filed on 10 August 2009, para. 1-2.

<sup>2</sup> Motion, paras. 4-5.

5. The Trial Chamber finds that Article 28 is not relevant for the purposes stated by the Defence in its Motion. The applicable directive in the circumstances is Rule 90 *bis* (B) of the Rules of Procedure and Evidence ("The Rules" hereinafter) regarding the transfer of a detained witness. That Rule reads as follows:

**Rule 90 *bis*: Transfer of a Detained Witness**

[...]

(B) The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions 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.

[...]

6. The Trial Chamber observes that the letter from the Rwandan Prosecutor giving Defence counsel permission to visit the witness at Cyangugu prison, is in no way a substitute for a document from the Rwandan authorities confirming: i) that the witness is not required for any criminal proceedings in progress in Rwanda, and ii) that the transfer would not extend the witness' detention. Thus, the Chamber finds that the Defence has not complied with Rule 90 *bis* (B).

**ACCORDINGLY, THE CHAMBER**

**DENIES** the Defence Motion without prejudice should the Defence re-file the Motion with the proper supporting documentation.

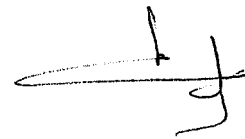
Arusha, 19 August 2009, done in English.



(Read and approved)  
Florence Rita Arrey  
Presiding Judge  
(Absent at the time of  
signature)



Mparany Rajohnson  
Judge



(Read and approved)  
Aydin Akay  
Judge  
(Absent at the time of  
signature)

[Seal of the Tribunal]

