

ICTR-02-78-I
20-08-2009
(3952 - 3950)

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Mwangi



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 20 August 2009

THE PROSECUTOR
v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-I

ORDER FOR TRANSFER OF DETAINED WITNESSES CDL AND CDK

Rule 90 bis 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

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INTRODUCTION

1. The trial in this case was originally scheduled to commence on 1 June 2009.¹
2. On 13 May 2009, the Prosecution filed a motion pursuant to Rule 90*bis* of the Rules of Procedure and Evidence ("the Rules"), requesting the transfer of detained witnesses CDK, CBR, CBT and CDL to the United Nations Detention Facility in Arusha, Tanzania, from 25 May until 10 June 2009.²
3. On 29 May 2009, the Chamber granted a Defence motion to postpone the start of the trial.³ The Chamber issued a Scheduling Order on 7 July 2009, instructing the Prosecution to present its case from 31 August until 19 September 2009.⁴
4. On 14 August 2009, the Prosecution filed an updated motion pursuant Rule 90*bis*, requesting that the Chamber order the transfer of two detained witnesses (CDL and CDK) from Rwanda to Arusha no later than 24 August 2009, in preparation for the start of the trial on 31 August 2009.⁵

DELIBERATIONS

5. Rule 90*bis* (A) of the Rules provides that, "[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal."
6. The Chamber shall issue a transfer order only after prior verification that the presence of the detained witness is not required for criminal proceedings in the requested State during the period he or she is required by the Tribunal and that transfer of the witness will not extend the period of his or her detention as foreseen by the requested State.⁶
7. The Prosecution bears the burden of showing that the conditions set out in Rule 90*bis* (B) have been met. The Prosecution, in this case, has provided a letter from the Minister of Justice of the Republic of Rwanda, dated 12 August 2009, confirming that witnesses CDL and CDK are not required for criminal proceedings in Rwanda and that their transfer to Arusha will not extend the periods of their detention.⁷ The Chamber is therefore satisfied that the Prosecution has discharged its burden under Rule 90*bis* (B).

¹ Scheduling Order Following the Status Conference (TC), 24 April 2009.

² Prosecution Extremely Urgent *Ex Parte* Motion for the Transfer of Detained Witnesses or Witnesses Under Judicial Supervision, filed on 13 May 2009.

³ Decision on the Extremely Urgent Defence Motion for Postponement of the Start of the Trial (TC), 29 May 2009.

⁴ Scheduling Order (TC), 7 July 2009.

⁵ Prosecutor's Request for an Order Transferring Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, filed on 14 August 2009.

⁶ Rule 90 *bis*(B) of the Rules of Procedure and Evidence.

⁷ Prosecutor's Request for an Order Transferring Detained Witnesses Pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, filed on 14 August 2009, annex A.

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20 August 2009

FOI THESE REASONS, the Chamber

GRANTS the Prosecution Motion;

ORDERS that, any time after the date of this Order, Prosecution Witnesses CDL and CDK be transferred temporarily to the Tribunal's Detention Facilities in Arusha. Their detention shall not extend beyond 30 September 2009;

INSTRUCTS the Registry to:

- transmit this Order to the Government of Rwanda and the Government of Tanzania;
- ensure the proper conduct of the transfer, including the supervision of the witness in the Detention Unit of the Tribunal;
- remain abreast of any changes which may occur regarding the witnesses' conditions of detention in the requested State, which may possibly affect the length of the temporary detention, and promptly inform the Trial Chamber of any such change;

REQUESTS the Government of Rwanda and the Government of Tanzania to cooperate with the Registry in the implementation of this order.

Arusha, 20 August 2009

[read and approved by]

[read and approved by]

Seon Ki Park

Seon Ki Park

Seon Ki Park

Taghrid Hikmet
Residing Judge
[absent at the time
of signature]



[Seal of the Tribunal]

Joseph Masanche
Judge
[absent at the time
of signature]