

ICTR-02-78-1
(09-01-2010
5197 - 5196)

5197
mwamp



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: 7 January 2010

THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-T

JUDICIAL RECORDS ARCHIVE
2010 JAN -7 A 10:46

**DECISION ON THE EXTREMELY URGENT DEFENCE MOTION FOR AN
ORDER FOR THE TRANSFER DETAINED WITNESS KG44**

Office of the Prosecutor:

Holo Makwaia
Althea Alexis Windsor
Cheikh Tidiane Mara
Lansana Dumbuya

Defence Counsel:

David Jacobs
Claver Sindayigaya
Marc Nerenberg

INTRODUCTION

1. The Prosecution presented its case from 31 August until 17 September 2009.¹
2. The Trial Chamber issued a Scheduling Order on 28 September 2009 instructing the Defence to present its case from 18 January 2010 to 12 February 2010.²
3. On 29 December 2009, the Defence filed a motion pursuant to Rule 90*bis* of the Rules of Procedure and Evidence (“the Rules”), requesting the transfer of detained witness KG44 to the United Nations Detention Facility in Arusha, Tanzania, from the Republic of Rwanda.³

DELIBERATIONS

4. 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.”
5. The Trial 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.⁴
6. The Defence bears the burden of showing that the conditions set out in Rule 90*bis* (B) have been met. The Defence, in this case, has provided a letter from the Minister of Justice of the Republic of Rwanda, dated 18 December 2009, confirming that Defence Witness KG44 is not required for criminal proceedings in Rwanda and that his transfer to Arusha will not extend the period of his detention.⁵ The Trial Chamber is therefore satisfied that the Defence has discharged its burden under Rule 90*bis* (B).

FOR THESE REASONS, the Chamber

GRANTS the Defence Motion;

ORDERS that, any time after the date of this Order, Defence Witness KG44 be transferred temporarily to the Tribunal’s Detention Facilities in Arusha. His detention shall not extend beyond 19 February 2010;

¹ Scheduling Order (TC), 7 July 2009.

² Scheduling Order following the Status Conference held on 17 September 2009 (TC), 28 September 2009.

³ Extremely Urgent Defence Motion for an Order for the Transfer of a Detained Witness (Strictly Confidential), filed on 29 December 2009 (“Defence Motion”).

⁴ Rule 90*bis*(B) of the Rules of Procedure and Evidence.

⁵ Defence Motion, Annex C.

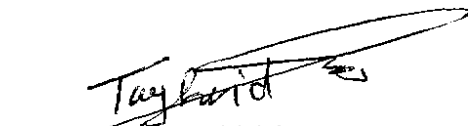
INSTRUCTS the Registry to:


1. transmit this Order to the Government of Rwanda and the Government of Tanzania;
2. ensure the proper conduct of the transfer, including the supervision of the witness in the Detention Unit of the Tribunal;
3. remain abreast of any changes which may occur regarding the witness' 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.

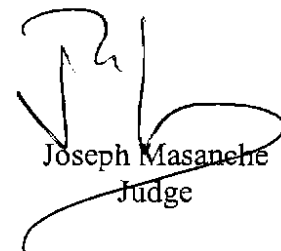
Arusha, 7 January 2010

[read and approved]


Taghrid Hikmet
Presiding Judge


Seon Ki Park
Judge
[absent at time of signature]
[Seal of the Tribunal]




Joseph Masanehe
Judge