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ICTR-96-3-T
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Case No. ICTR-96-3-T
**CRIMINAL REGISTRY
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UNITED NATIONS



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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

CHAMBER I - CHAMBRE I

OR : ENG

Before: Judge Laïty Kama, Presiding Judge
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr Antoine K.M.Mindua

Decision of: 26 March 1998

**THE PROSECUTOR
VERSUS
GEORGES ANDERSON NDERUBUMWE RUTAGANDA**

Case No. ICTR-96-3-T

**DECISION ON THE URGENT MOTION FILED BY THE DEFENCE FOR THE
IMMEDIATE TRANSFER AND APPEARANCE OF A DETAINED WITNESS,
FRODUALD KARAMIRA**

The Office of the Prosecutor:

Mr. James Stewart
Mr Udo Gehring

Counsel for the Accused:

Ms. Tiphaine Dickson

Def/mot/90bis L963

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "TRIBUNAL"),

SITTING as Trial Chamber I, composed of Judge Laïty Kama as Presiding Judge, Judge Lennart Aspegren and Judge Navanethem Pillay;

HAVING BEEN SEIZED by the Defence Counsel's motion of 20 February 1998, filed pursuant to Rule 90*bis* of the Rules of Procedure and Evidence (the "Rules"), requesting an order for the immediate transfer and appearance of Froduald Karamira as a witness for the defence in the trial of Georges Anderson Rutaganda (the "accused");

NOTING that Froduald Karamira is believed to be currently detained in Kigali Central Prison, Rwanda;

CONSIDERING THAT the Prosecutor opposed Defence Counsel's motion in a response dated 2 March 1998;

HAVING HEARD the Prosecutor and the Defence Counsel at a hearing on 27 February 1997;

AFTER HAVING DELIBERATED,

1. The Defence Counsel submitted that the testimony of Froduald Karamira is crucial to the case of the accused for the following reasons :-

(a) He will be able to confirm or invalidate the statement in this case by the expert witness Professor Filip Reyntjens, concerning the conversations they allegedly had in April 1994;

(b) He will be able to confirm or invalidate the existence of orders and links between the Interahamwe organisation and outside elements, in particular, Colonels Théoneste Bagosora and Tharcisse Rezhaho;

(c) He will be able to provide direct testimony on the meaning and nature of the speech commonly referred to as 'Power' which he delivered on 23 October 1993 at the Nyamirambo stadium in Kigali, which prosecution witnesses have already testified to;

(d) He will be able to provide direct testimony on the events that took place in Kigali in 1994;

(e) He will be able to provide direct testimony on the signing of an agreement between the Rwandan opposition parties and the RPF in Brussels in June 1992;



(f) He will be able to provide the Tribunal with any information relating to the Interahamwe and their evolution; and

(g) He will be able to testify to all the facts concerning Georges Rutaganda.

2. Defence Counsel averred:

a) that Froduald Karamira was sentenced to death on 14 February 1997 by the Rwandan Criminal Court in Kigali for crimes of Genocide, that he has exhausted all avenues of recourse before the Rwandan Courts and that his presence is no longer required for any criminal proceedings in Rwanda;

b) that Froduald Karamira is not facing a prison term, but the death penalty. Therefore, his transfer to the ICTR Detention Facility is not likely to extend the period of his detention; and

c) that Froduald Karamira must be transferred immediately to the ICTR Detention Facility, given his imminent execution.

3. The Prosecutor, in opposing the defence motion, submitted that the Defence :-

(a) has failed to demonstrate that the conditions under Rule 90 bis(B) of the Rules have been met;

(b) has given no indication that Froduald Karamira wishes to testify;

(c) has given no indication that Froduald Karamira may have any evidence relating to the conduct of the accused and that this would help the accused in his defence.

4. The Prosecutor also submitted that in the event of the Tribunal deciding that Froduald Karamira is an essential witness for the defence, it may consider other mechanisms for obtaining his testimony. One such mechanism is provided for in Rule 71 of the Rules.

5. The Tribunal notes that Article 20(4)(e) of the Statute of the Tribunal affords the accused the right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.



6. The Tribunal recalls that Rule 90*bis* (B) of the Rules states that :-

“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;”.

7. The Tribunal refers to its previous decision in the case of Jean-Paul Akayesu (ICTR-96-4-T), dated 31 October 1997, wherein a letter from the Rwandan Minister of Justice had served to verify that the conditions as set out in Rule 90*bis*(B) have been complied with.

8. The Tribunal notes that subsequent to the hearing on 27 February 1998, the Defence had furnished copies of a document with no proper seal, stamp or any other form of authentication. Although this was irregular, the Tribunal nevertheless considered the contents of this document. This document indicated that Froduald Karamira had been convicted and sentenced to death for crimes of genocide by a Kigali court of the first instance, a specialized Trial Chamber, and that he was denied appeal by the Kigali Court of Appeal.

9. The Tribunal nevertheless notes that this document tendered by the Defence does not in itself, confirm that Froduald Karamira has exhausted all post appeal avenues available to him within the Rwandan criminal code, such as pardon or commutation of sentence. It also notes that, the Defence has failed to show that conditions provided for under Rule 90 *bis* of the Rules , particularly its paragraph (i), have been complied with.

10. Furthermore, the Tribunal notes that the Defence has also failed to present evidence, indicating that Froduald Karamira would consent to testify for the defence.



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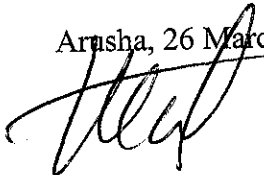
11. Consequently, the Tribunal finds that since the conditions set forth under Rule 90 *bis* (B) of the Rules have not been complied with, it is proper, as the case stands, to dismiss the Defence motion for the immediate transfer and appearance of Froduald Karamira.


FOR ALL THE ABOVE REASONS,


THE TRIBUNAL

DISMISSES the Defence motion for the immediate transfer and appearance of Froduald Karamira as a witness for the defence in this case.

Arusha, 26 March 1998


Laity Kama
Presiding Judge


Lennart Aspegren
Judge


Navanethem Pillay
Judge

(Seal of the Tribunal)



