ICTR-01-76-I
14-07-2004
(2587 - 2585)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

2587
S. Mussa

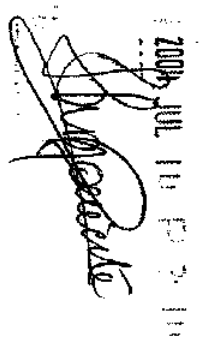
OR: ENG

TRIAL CHAMBER I

Before: Judge Jai Ram Reddy, presiding
Judge Sergei Alekseevich Egorov
Judge Emile Short

Registrar: Adama Dieng

Date: 14 July 2004



THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-I

DECISION ON DEFENCE MOTION TO DISQUALIFY EXPERT WITNESS, ALISON DES FORGES, AND TO EXCLUDE HER REPORT

Office of the Prosecutor
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Sulaiman Khan
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Sadikou Ayo Alao
Beth Lyons

Nof

2586

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("the Tribunal");

SITTING as Trial Chamber I, composed of Judge Jai Ram Reddy, presiding, Judge Sergei Alekseevich Egorov, and Judge Emile Short;

BEING SEIZED OF the "Requête en irrecevabilité du rapport d'expertise et en disqualification de l'expert, Alison Des Forges", filed on 26 May 2004;

CONSIDERING the Prosecutor's Response, filed on 31 May 2004; the Defence Reply, filed on 7 June 2004, and the Corrigendum thereto, filed on 9 June 2004;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Indictment against the Accused was confirmed on 8 January 2002. The amended Indictment was filed on 27 January 2004, the second amended Indictment was filed on 10 May 2004, and the trial is scheduled to commence on 16 August 2004. On 5 April 2004, the Prosecution filed a motion for the admission of the transcripts and exhibits of Alison Des Forges's testimony in *Prosecutor v. Akayesu*.

SUBMISSIONS

2. Regarding exclusion of the expert report, the Defence submits that it should be excluded under Rule 95 because the report contains information from protected Prosecution witnesses and confidential correspondence written by the Accused. The use of the information from protected witnesses prejudices the presumption of innocence of the accused and the use of correspondence violates Article 12 of the Universal Declaration of Human Rights ("UDHR"). Finally, the Defence contends that the information in the report is unreliable due to the lack of corroboration or adversarial debate, and proposes that the information in the report was furnished by political enemies of the Accused. Regarding the disqualification of Dr. Des Forges, the Defence submits that Dr. Des Forges does not fulfil the definition of an expert witness from the Akayesu case because she is not impartial and her testimony is not technical in nature. The Defence underscores that her impartiality has already been challenged in Mugesera v. Canada.

3. The Prosecution submits that the Defence motion is premature because the information has not actually been offered into evidence, nor has its relevance been challenged. The Prosecution argues that the Defence is precluded from arguing that the evidence is inadmissible on the grounds that it was "obtained by methods which cast substantial doubt on its reliability" because the Defence has not raised these objections. Therefore, the Defence may only argue that the evidence's "admission is antithetical to, and would seriously damage, the integrity of the proceedings" and has not met its burden in doing so. In addition, the Prosecution submits that excluding the evidence without hearing Dr. Des Forges would be a "serious breach of justice". The argument that the report contains information supplied by political enemies of the accused is merely speculative. The Prosecution contends that the Mugesera case cannot be a basis to

discredit the report because Dr. Des Forges has not yet testified, and that the report contains helpful, technical information. The Prosecution further submits that it has not disclosed information relating to protected witnesses. The Defence responds to this statement by saying that if the Prosecution did not give information about protected witnesses to Dr. Des Forges, then she acquired that information through fraud or theft.

DELIBERATIONS

4. Rule 95 provides as follows:

> No evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings.

5. In respect of the report, the expert witness's methodology in compiling the report is not known at present. These are arguments that may be made when the Prosecution seeks to enter the report into evidence, and the Defence can test the reliability of the report during cross-examination. As for the UDHR, it protects against "*arbitrary*" interferences with a person's correspondence, and does not apply in this case. In addition, the Defence's arguments alluding to the Accused's political enemies and fraud are highly speculative.

6. With respect to the disqualification of the witness, the Chamber recalls that an expert witness is one "whose testimony is intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field".[1] The witness is being called for her expertise as an historian. The Tribunal is not bound by the findings of the Canadian Court in *Mugesera v Canada*, just as it is not bound by previous Trial Chambers in this Tribunal who have found the witness to be an expert witness. The motion is premature and largely speculative in nature. The Defence has not shown how Rule 95 disallows the admission of the report or the witness.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the motion.

Arusha, 14 July 2004

Jai Ram Reddy
Presiding Judge

Sergei Alekseevich Egorov
Judge

Emile Short
Judge

(Seal of the Tribunal)

[1] *Akayesu*, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998.

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From:	☑ Chamber Gabeh (name)	☐ Defence (name)	☐ Prosecutor's Office (name)	☐ Other: (name)
Case Name:	The Prosecutor vs. Simba		**Case Number:** ICTR-01-76-I	
Dates:	Transmitted: 14/7/04		Document's date: 14/7/04	
No. of Pages:	3	**Original Language:** ☑ English	☐ French	☐ Kinyarwanda
Title of Document:	Decision - Defence Motion to Disqualify Expert Witness - Report			

Classification Level:	**TRIM Document Type:**			
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☐ Reference material is provided in annex to facilitate translation.

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