

ICTR-2001-70-1
24-10-2002
(1650-1648)

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INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

TRIAL CHAMBER III

Before: Judge Lloyd George Williams
Judge Yakov Arkadievich Ostrovsky
Judge Pavel Dolenc

Registry: Mr. Adama Dieng

Date filed:

JUDICIAL RECORDS
RECEIVED
ICTR
2002 OCT 24 P 5:44
Adama Dieng

The Prosecutor

v.

Emmanuel Rukundo

Case No.: ICTR-2001-70-1

DEFENCE MOTION FOR RETURN OF DOCUMENTS AND OTHER
SEIZED PERSONAL ITEMS

Office of the Prosecutor:

Sylvana Arbia, Senior Trial Attorney
Gregory Townsend, Assistant Trial Attorney
Faria Rekkas, Case Manager

Counsel for the Defence:

Bâtonnier Philippe Moriceau

Translation certified by LSS, ICTR

DIII02-0052 (E)

1. The Accused Emmanuel Rukundo was arrested on 12 July 2001 in Geneva by the *Office fédéral de la justice de la confédération helvétique (Suisse)* [the Department of Justice of the Swiss Confederation (Switzerland)] under an international warrant of arrest issued by ICTR.
2. In the course of his arrest, officers of the Prosecution searched the Accused's residence and seized various documents and personal items.
3. On 20 September 2001, the Accused was transferred to the ICTR Detention Facility in Arusha, Tanzania.
4. On 26 September 2001, at his initial appearance, Emmanuel Rukundo requested that the items seized from his residence during his arrest be returned. Judge Møse responded that he had taken note of the issue he had raised concerning the personal items which were seized at the time of his arrest, especially those that are useful for his defence. He added, however, that "this is not the hearing where we can address these issues", and asked that the matter be pursued subsequently.
5. On 16 October 2001, Emmanuel Rukundo received a 16-page document, dated 12 October, sent by the Office of the Prosecutor and entitled "Inventory of Seized Items from Emmanuel Rukundo", only listing the documents and items seized at the time of his arrest, without any mention of restitution.
6. As the Accused, Emmanuel Rukundo, emphasized at his initial appearance, the documents and personal effects seized during his arrest include evidentiary material which is extremely important for his defence: journal articles concerning him, testimonies, etc. The inventory indicates that 570 items were seized.
7. It appears to have been established that such a procedure was carried out pursuant to Rule 40 (A)(ii) which provides for provisional measures specifically in case of urgency which may be conceivable in the event of an arrest. Nevertheless, these items have remained in the possession of the Prosecution since then, without being used. They have not been deemed relevant by the Prosecution, which has made no use of them for 14 months now.
8. Moreover, the Prosecution appears not to have found the slightest indicia to support the indictment, nothing more than the file it has itself prepared that it intends to submit before the Tribunal subsequently. In fact, it did not, in other words, forget to include in the material which it has to disclose under Rule 66(A)(ii) of the Rules of Procedure and Evidence, those items that it may have considered to be vital. Furthermore, at no time did the Prosecutor request the non-disclosure of any of those items under Rules 53 (A) and 53 (C) of the Rules of Procedure and Evidence.
9. In short, the Prosecution found nothing of interest in those items.

10. Yet, many of these items are important not only for the defence of Emmanuel Rukundo, but also in the interests of justice and for the discovery of the truth. Besides, making these items available to the Defence would enable it to prepare its case to ensure a fair application of Article 20(4)(3) of the Statute of the Tribunal.

11. While the Prosecutor is responsible for the preservation of these items pursuant to Rule 41 of the Rules of Procedure and Evidence, it should be noted that the Prosecution cannot treat such temporary possession as being definitive in breach of Rule 68 of the Rules of Procedure and Evidence.

12. Some of these materials may exculpate Emmanuel Rukundo from the crimes with which he is charged, while also vitiating the credibility of the Prosecution evidence produced to date. These documents (diskettes, attestations, newspapers), may help in proving his innocence. His passport is an important document not only intrinsically, but also because it establishes the accuracy of his contested status, as well as his status at the time of arrest. In that connection, it should be reiterated:

- that a provisional measure ceases to apply when the reason for which it was instituted is no longer valid. The Accused will shortly need these documents to enable him to prepare his defence in light of his obligations under Rule 67 of the Rules of Procedure and Evidence.

For the foregoing reasons

The Defence for Emmanuel Rukundo respectfully requests Trial Chamber III of ICTR:

- (a) To rule the instant Motion admissible and well founded;
- (b) To order the Office of the Prosecutor to return to the Accused Emmanuel Rukundo, the documents and other personal items seized from his residence during his arrest pursuant to Rule 66 (B) of the Rules of Procedure and Evidence.

Biarritz, 3 October 2002

(signed)
Bâtonnier Philippe Moriceau



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

Arusha International Conference Centre
P.O.Box 6016, Arusha, Tanzania - B.P. 6016, Arusha, Tanzania
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**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA**

Date: 25 October, 2002	Case Name / affaire: The Prosecutor v. - EMMANUEL RUKUNDO		
	Case No / no. de l'affaire: ICTR-2001-70-I		
To: A:	<input type="checkbox"/> TC1	received by / reçu par:	ALO: received by / reçu par
	<input type="checkbox"/> Judge N. Pillay, President	<input type="checkbox"/>
	<input type="checkbox"/> Judge Møse, Vice President	<input type="checkbox"/>
	<input type="checkbox"/> Judge A. Vaz	<input type="checkbox"/>
	<input type="checkbox"/> E. Nahamya, Co-ordinator	<input type="checkbox"/>
	<input type="checkbox"/> TC2		
	<input type="checkbox"/> Judge W. H. Sekule	<input type="checkbox"/>
	<input type="checkbox"/> Judge W. C. M. Maqutu	<input type="checkbox"/>
	<input type="checkbox"/> Judge A. Ramarosan	<input type="checkbox"/>
	<input type="checkbox"/> A. Lorey, Co-ordinator	<input type="checkbox"/>
	<input checked="" type="checkbox"/> TC3		
	<input type="checkbox"/> Judge L.G. Williams	<input type="checkbox"/>
	<input type="checkbox"/> Judge Y. Ostrovsky	<input type="checkbox"/>
	<input type="checkbox"/> Judge P. Dolenc	<input type="checkbox"/>
	<input type="checkbox"/> M. Niang, Co-ordinator	<input type="checkbox"/>
<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR 4			
<input type="checkbox"/> Trial Attorney in charge of case:.....	SILVANA ARBIA	received by
<input type="checkbox"/> DEFENSE:			
<input type="checkbox"/> Accused / Accusé:.....	RUKUNDO		complete / remplir " CMS4 FORM"
<input type="checkbox"/> Lead Counsel / Conseil Principal:....	PHILIPPE MORICEAU		
<input type="checkbox"/> In / à Arusha Arusha (signature)	<input type="checkbox"/> by fax	complete / remplir " CMS3bis FORM"
<input type="checkbox"/> Co-Counsel / Conseil Adjoint:			
<input type="checkbox"/> In / à Arusha Arusha (signature)	<input type="checkbox"/> by fax	complete / remplir " CMS3bis FORM"
All Decisions:	<input type="checkbox"/> Appeals Chamber Unit, The Hague	<input type="checkbox"/> Suzanne Chenault, Jurist Linguist	
All Decisions & Important Public Documents:	<input type="checkbox"/> Press & Public Affairs	<input type="checkbox"/> Legal Library	
From: De:	<input type="checkbox"/> JP. Fomété (OIC, CMS)	<input type="checkbox"/> Y. Ling (TC 1)	<input type="checkbox"/> R. Kuoambo (TC 2)
	<input checked="" type="checkbox"/> K. Afande (TC 3)	<input type="checkbox"/> F. Talon (Appeals)	
Cc:	<input type="checkbox"/> A. Dieng	<input type="checkbox"/> A. Miller, OLA, NY	<input type="checkbox"/> L. G. Munio
	<input type="checkbox"/> K. Moghalu	<input type="checkbox"/> S. Van Driessche	
	<input type="checkbox"/> WVSS- D	<input type="checkbox"/> WVSS-P	<input checked="" type="checkbox"/> E. O'Donnell
	<input type="checkbox"/> LDFMS	<input type="checkbox"/> P. Nyambe GLSS	<input type="checkbox"/> P. Enow
Subject Objet:	Kindly find attached the following document(s) / Veuillez trouver en annexe le(s) document(s) suivant(s):		

Documents name / titre du document

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Date Filed / Date enregistré Pages

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**PROOF OF SERVICE TO DETAINEES
PREUVE DE NOTIFICATION D'ACTES AUX DETENUS**

Upon signature of the detainee, please return this sheet to the originator as proof of service.
Formulaire à être renvoyé à l'expéditeur dûment signé par le détenu.

Date: 25 October, 2002		Case Name / affaire: The Prosecutor v. EMMANUEL RUKUNDO		
		Case No / affaire no: ICTR-2001-70-I		
To: A:	Name of detainee / nom du détenu RUKUNDO	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU I confirm reception of the document(s) listed below. Signature Date, Time / Heure <i>Je confirme réception du/des documents mentionné(s) ci-dessous.</i>		
Via:	Security Officer Commanding Officer, UNDF	Print name / nom SAIDOU GUINDO	Signature 	Date, Time / Heure 29/10/02
From: De:	<input type="checkbox"/> JP. Fomété <input type="checkbox"/> Y. Ling (TC1) <input type="checkbox"/> R. Kuoambo (TC2) <input checked="" type="checkbox"/> K. Afande (TC3) <input type="checkbox"/> F. Talon Ahouandogbo (Appeals) <input type="checkbox"/> Other / Autre			
Subject Objet:	Kindly find attached the following documents / Veuillez trouver en annexe les documents suivants.			

Documents name / titre du document

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Date Filed / Date enregistré
24/10/2002

Pages
3

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*** TX REPORT ***

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TX/RX NO 2107
CONNECTION TEL #9033559224101
SUBADDRESS
CONNECTION ID
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RESULT OK

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ICR-2001-70-I
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1650
ATM

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TRIAL CHAMBER III

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