

ICTR-98-41-T
12-11-2003
(17095 - 17093)

17095
S. Musee

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

IN TRIAL CHAMBER I

Before : The Honourable Mr. Justice Erik MØSE, President
The Honourable Mr. Justice Jai Ram REDDY
The Honourable Mr. Justice Sergei Aleckseievich EGOROV

Registrar: Mr. Adama Dieng

Filing Date: 12 November 2003.

THE PROSECUTION

v.

Théoneste BAGOSORA

Gratien KABILIGI

Anatole NSENGIYUMVA

Aloys NTABAKUZE

Case No: ICTR-98-41-T

2003 NOV 12 A 10:28
S. Musee

**NTABAKUZE DEFENCE MOTION TO EXCLUDE MR. SEGUN JEGEDE
FROM THE TRIAL CHAMBER IN VIRTUE OF RULE 90(D), AND TO HAVE
HIM BARRED FROM PARTICIPATING IN THE PROSECUTION OF THE
MILITARY I CASE IN VIRTUE OF A CONFLICT OF INTEREST**

Counsel for the Prosecution

Ms. Barbara MULVANEY
Mr. Drew WHITE
Mr. Segun JEGEDE
Ms. Christine GRAHAM
Mr. Rashid RASHID
Mr. Alex OBOTE-ODORA

Counsel for the Defence

Mr. Raphaël CONSTANT
Mr. Paul SKOLNIK
Mr. Jean Yaovi DEGLI
Mr. Kennedy OGETTO
Mr. Gershon Otachi BWOMANWA
Mr. Peter ERLINDER
Mr. André TREMBLAY

FACTUAL BACKGROUND:

1. On 14 July 1998, witness WB, who is scheduled to testify next in the Military I case was interrogated by investigators of the ICTR and gave a written declaration concerning the events about which he is expected to testify.
2. One of the investigators who participated in that interrogation and preparation of witness statement was Mr. Segun Jegede, who is now working as a prosecutor in the Military I case.
3. Near the end of August 2003, the Defence received disclosure of "photo line-up" evidence regarding witness WB and the accused, Major Ntabakuze which was prepared earlier that month. This new evidence, coupled with the evidence of the witness statement of 14 July 1998, raises certain questions that the attorneys for Major Ntabakuze would wish to put to Mr. Jegede in the context of the Ntabakuze defence, later in the trial. Hence, it is the intention of the Ntabakuze Defence to call Mr. Segun Jegede as a witness in this trial.

THE PROBLEMS:

4. As a prosecutor in the file, Mr. Jegede, an eventual defence witness, has been, and will continue to be present for the testimony of many of the other witnesses that have testified and will testify in the Military I case.
5. Rule 90 (D) of the Rules of Procedure and Evidence explicitly states that a "witness, other than an expert, who has not yet testified, shall not be present when the testimony of another witness is given". Hence, as an eventual defence witness, Mr. Jegede can not continue to attend hearings of the Military I Trial.
6. Furthermore, Mr. Jegede, as an eventual Defence witness, can not continue to participate in the planning, preparation and prosecutorial discussions regarding the case in which he will be testifying on behalf of the accused. He would be in a conflict of interest to do so.

THE SOLUTION:

7. The only logical solution for the first problem would be for Mr. Jegede to be absent from the Trial Chamber until such time as he has testified, and for him to refrain from watching the testimony of any of the witnesses on closed circuit television until the same time.
8. The only logical solution for the second problem would be for the Office of the Prosecutor to remove Mr. Jegede from the present file, and to bar him from any future discussions, planning or preparation of the instant case.

CONCLUSION:

Therefore, we pray this Tribunal to

ORDER Mr. Segun Jegede to absent himself from the Trial Chamber during the hearing of the Military I case until such time as he has testified in the case,

And

ORDER the Office of the Prosecutor to remove Mr. Segun Jegede from the Military I case, and bar him from any future participation in planning, preparations and discussions with any of the staff of the Office of the Prosecutor regarding said case.

Respectfully submitted at Arusha, this 6th day of November, 2003,

*Peter Erlinder per
André Tremblay (proxy)*
Peter Erlinder, Lead Counsel

André Tremblay
André Tremblay, Co-counsel

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(Art. 27 of the Directive for the Registry, Court Management Section, International Criminal Tribunal for Rwanda)

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From:	<input type="checkbox"/> Chamber (name)	<input checked="" type="checkbox"/> Defence Andre Tremblay (name)		<input type="checkbox"/> Prosecutor's Office (name)		<input type="checkbox"/> Other: (name)		
Case Name:	The Prosecutor vs. Bagosora, Kabiligi, Ntabakuze, Nsengiyumva				Case Number: ICTR-98-41-T			
Date:	Transmitted: 12 November 2003		Document's date: 6 November 2003		No. of Pages: 3			
Original / Transl.	Document is a(n): <input checked="" type="checkbox"/> ORIGINAL: Fill sections below				<input type="checkbox"/> TRANSLATION into <input type="checkbox"/> Eng <input type="checkbox"/> Fr <input type="checkbox"/> Kinyar. (original was filed on)			
Doc. Title	NTABAKUZE DEFENCE MOTION to Exclude Mr. Segun Jegede from the Trial Chamber in Virtue of Rule 90(D), and to Have Him Barred from Participating in the Prosecution of the Military I Case in Virtue of a Conflict of Interest							
Classification Level:			TRIM Doc Type:					
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**PROOF OF SERVICE – ARUSHA
PREUVE DE NOTIFICATION – ARUSHA**

Date: 12-11-03	Case Name / Affaire: The Prosecutor vs.	Théoneste BAGOSORA Gratien KABILIGI Anatole NSENGIYUMVA Aloys NTABAKUZE
	Case No / Affaire No.: ICTR-98-41-T	
To: A:	<input checked="" type="checkbox"/> TC1 <input type="checkbox"/> Judge E. Mose, President <input type="checkbox"/> Judge J. R. Reddy <input type="checkbox"/> Judge S. A. Egorov <input type="checkbox"/> Judge K. R. Khan (Ndindabahizi) <input type="checkbox"/> Judge S. B. Bossa (Ndindabahizi) <input type="checkbox"/> J. Neuwirth, SLO <input type="checkbox"/> E. Nahamya, Co-ordinator <input type="checkbox"/> TC2 <input type="checkbox"/> Judge W. H. Sekule <input type="checkbox"/> Judge A. Z. Gunawardana <input type="checkbox"/> Judge A. Ramaroson <input type="checkbox"/> Judge K. R. Khan (Bizimungu et al.) <input type="checkbox"/> Judge L. G. Muthoga (Bizimungu et al.) <input type="checkbox"/> Judge S. B. Bossa (Nyiramasuhuku et al.) <input type="checkbox"/> C. Eboe-Osuji, SLO <input type="checkbox"/> A. Leroy, Co-ordinator <input type="checkbox"/> TC3 <input type="checkbox"/> Judge L. G. Williams <input type="checkbox"/> Judge Y. Ostrovsky <input type="checkbox"/> Judge P. Dolenc <input type="checkbox"/> Judge A. Vaz <input type="checkbox"/> Judge J. R. Reddy (Gacumbitsi) <input type="checkbox"/> Judge S. A. Egorov (Gacumbitsi) <input type="checkbox"/> Judge K. R. Khan <input type="checkbox"/> Judge F. R. Arrey (Karempera et al.) <input type="checkbox"/> Judge F. Lattanzi (Karempera et al.) <input type="checkbox"/> E. O'Donnell, SLO <input type="checkbox"/> R. Adjovi, Co-ordinator <input type="checkbox"/> R. Diarra, Co-ordinator (Karempera et al.)	received by / reçu par: 12-11-03 12-11-03 12-11-03 ALO: received by / reçu par 12-11-03
	<input checked="" type="checkbox"/> OTP / BUREAU DU PROCUREUR <input type="checkbox"/> Trial Attorney in charge of case: B. Mulvaney <input checked="" type="checkbox"/> DEFENSE <input type="checkbox"/> Accused / Accusé: T. Bagosora, G. Kabiligi, A. Nsengiyumva, A. Ntabakuze <input type="checkbox"/> Lead Counsel / Conseil Principal: R. Constant, J. Y. Degli, K. Ogetto, P. Ender <input type="checkbox"/> In / à Arusha Arusha: Shaw... <input type="checkbox"/> Co-Counsel / Conseil Adjoint: P. Skolnik, D. Martin-Sperry, G. O. Bw'Omanwa, A. Tremblay <input type="checkbox"/> In / à Arusha Arusha: (signature)	received by A. S. Eyo 12/11/03 complete / remplir "CMS4 FORM" <input type="checkbox"/> by fax complete / remplir "CMS3bis FORM" <input type="checkbox"/> by fax complete / remplir "CMS3bis FORM" <input type="checkbox"/> S. Chenault, Jurist Linguist
	All Decisions: <input type="checkbox"/> Appeals Chamber Unit, The Hague All Decisions & Important Public Documents: <input type="checkbox"/> Press & Public Affairs <input type="checkbox"/> Legal Library	
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Cc:	<input type="checkbox"/> A. Dieng <input type="checkbox"/> A. Miller, OLA, NY <input type="checkbox"/> L. G. Munlo <input type="checkbox"/> M. Niang <input type="checkbox"/> S. van Driessche <input type="checkbox"/> WVSS-D <input type="checkbox"/> WVSS-P <input type="checkbox"/> E. O'Donnell <input type="checkbox"/> DCMS <input type="checkbox"/> P. Enow	
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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:		Case Name / Affaire: The Prosecutor vs. - Théoneste BAGOSORA - Gratien KABILIGI - Anatole NSENGIYUMVA - Aloys NTABAKUZE		
		Case No / Affaire No: ICTR-98-41-T		
To: A:	Name of detainee / nom du détenu NSENGIYUMVA	TO BE FILLED IN BY THE DETAINEE A COMPLETER PAR LE DETENU		
		I confirm reception of the document(s) listed below. <i>Je confirme réception du/des documents mentionné(s) ci dessous.</i>		
		Signature	Date, Time / Heure	
			13.11.03	
Via:	Security Officer Commanding Officer, UNDF	Print name / nom S. Guindo	Signature 	Date, Time / Heure 13.11.03
From: De:	<input type="checkbox"/> J.-P. Fomété (Chief, CMS) <input checked="" type="checkbox"/> N. Diallo (TC1) <input type="checkbox"/> R. Kouambo (TC2) <input type="checkbox"/> C. Hometowu (TC3) <input type="checkbox"/> F. A. Talon (Appeals) <input type="checkbox"/> Other / Autre			
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NTABAKUZE DEFENCE MOTION TO EXCLUDE MR. SEGUN JEJEDE FROM THE TRIAL CHAMBER IN VIRTUE OF RULE 90(D), AND TO HAVE HIM BARRED FROM PARTICIPATING IN THE PROSECUTION OF THE MILITARY CASE IN VIRTUE OF A CONFLICT OF INTEREST

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		I confirm reception of the document(s) listed below. <i>Je confirme réception du/des documents mentionné(s) ci-dessous.</i>	Signature 	Date, Time / <i>Heure</i> 18/11/03
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