

1 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
2 CASE NO.: ICTR-98-44A-T THE PROSECUTOR
3 OF THE TRIBUNAL
4 AGAINST
5
6 JUVÉNAL KAJELIJELI

7
8 8 APRIL 2002
9 0930H
10 CONTINUED TRIAL

11 Before: Judge William H. Sekule, Presiding
12 Judge Winston Churchill Matanzima Maqutu
13 Judge Arlette Ramaroson

14 For the Registry:
15 Mr. John Kiyeyeu
16 Mr. Abraham Koshopa

17 For the Prosecution:
18 Ms. Carla Del Ponte
19 Mr. Ken Fleming
20 Ms. Ifeoma Ojemeni

21 For the Accused Kajelijeli:
22 Professor Lennox Hinds
23 Professor Nkeyi Bompaka

24 Court Reporters:
25 Ms. Sithembiso Moyo

1 P R O C E E D I N G S

2 MR. PRESIDENT:

3 The proceedings are called to order. Could
4 the Registry introduce the matter coming
5 before the Trial Chamber this morning?

6 MR. KIYEYEU:

7 Thank you, Mr. President.
8 Trial Chamber II of the International
9 Criminal Tribunal for Rwanda, composed of
10 Judge William H. Sekule, presiding,
11 Judge Winston Churchill Matanzima Maqutu and
12 Judge Arlette Ramaroson, is now sitting in
13 open session, today, Monday, the 8th of
14 April 2002, for continuation of the trial in
15 the matter of the Prosecutor v Juvénal
16 Kajelijeli, Case No. ICTR-98-44A-T.
17 Thank you, Mr. President.

18 MR. PRESIDENT:

19 Thank you, Mr. Kiyeyeu for the registry.
20 May we have the parties' appearance,
21 starting with the Prosecution, if we may,
22 please?

23 MR. FLEMING:

24 If the Court pleases. I am Ken Fleming,
25 Senior Trial Attorney. I appear with my
SITHEMBISO MOYO - OFFICIAL COURT REPORTER
ICTR - TRIAL CHAMBER II

1 learned leader, the Prosecutor, Madam Carla
2 Del Ponte and with Ms. Ifeoma Ojemeni.
3 Thank you.

4 MR. PRESIDENT:

5 Thank you, learned counsel.

6

7 May we also have the appearance of the
8 Defence, please?

9 PROFESSOR HINDS:

10 Good morning, Your Honours, Lennox Hinds
11 representing Mr. Kajelijeli and also
12 Professor Bompaka who is co-counsel and
13 Mr. Emilien Dusabe, who is the interpreter.

14 MR. PRESIDENT:

15 Thank you, learned counsel.

16

17 Yes, Mr. Fleming?

18 MR. FLEMING:

19 Thank you, Your Honours. Your Honours might
20 well be aware that there are some
21 difficulties with proceeding today. Those
22 difficulties arise as a result of two
23 things. First, there are no witnesses here
24 and second, there are ongoing difficulties
25 with the investigations into the alibi and

1 witnesses.

2

3 If I may deal with the first issue first.

4 Your Honours may or may not be aware that,

5 IBUKA, one of the organisations which

6 represents the victims and witnesses in this

7 Court, has put an embargo upon witnesses

8 travelling here. As a result, two witnesses

9 that we wanted to call in this session are

10 not going to be here.

11

12 Your Honours, it becomes an unsatisfactory

13 situation, given that this Court doesn't

14 have the coercive powers that a domestic

15 court would have. We are aware that there

16 are some things that can be done but those

17 proceedings are so convoluted and difficult,

18 there could be of no assistance in an

19 emergency such as we have here.

20

21 Some steps have been taken and the

22 Registrar, I understand, has written

23 recently to the Minister of Justice,

24 outlining the difficulties and requesting

25 that some action be taken to ensure that the

1 witnesses come.

2

3 So, the problems result from not having the
4 coercive powers and then having a
5 misconception of what is actually happening
6 in this Court, a misconception which is so
7 ingrained is going to be very difficult to
8 remove.

9

10 The second reason why there are no witnesses
11 here, is that, it was hoped that we could
12 have alibi witnesses dealt with in these
13 sittings. Any evidence that we wanted to
14 call in response to alibi material, we would
15 be able to do it, and we are not able to do
16 that.

17

18 Your Honours, if I can take you back a
19 little in history. Your Honours will recall
20 that during cross-examination of one of our
21 very early witnesses, when material wasn't
22 being put to that witness as one would do in
23 the common law system, I raised the issue
24 directly as to whether or not there was
25 going to be alibi evidence and the answer

1 was "Yes" and no alibi statement had been
2 given to us or notice of alibi had been
3 given to us, because Defence counsel were
4 relying upon the exception in the Rule,
5 namely; that even if they don't give us the
6 material, they won't be excluded from
7 relying upon it. Now, that gave rise to a
8 ruling by this Honourable Court, for them to
9 provide us with the notice of alibi. That
10 was done, but no details were given to us of
11 who those witnesses were. When there was
12 material suggesting who they were, there was
13 no order in place in respect of the witness
14 protection of those witnesses. So, all of
15 that didn't occur until well into January of
16 this year.

17
18 Now, we hoped as we said, that we could have
19 called any evidence in rebuttal during our
20 case as the rules anticipate. We were not
21 able to do that because we haven't spoken to
22 all of the alibi witnesses, we have spoken
23 to some, but not all.

24
25 Further, investigations are presently being

1 hampered by events that are entirely out of
2 the control, even if this Court -- and that
3 is the eruption of the volcano in Ngoma, and
4 we have been precluded from pursuing some of
5 the witnesses because of the chaos that
6 pursued there. And, in addition to that,
7 presently, there are further difficulties
8 going into the areas of Ruhengeri and
9 Gisenyi for the same reason. So, all of our
10 best endeavours have come to naught.

11
12 We notified this Honourable Court on the
13 19th of March, it's here that we wouldn't
14 require all of the time that had been set
15 aside because we then only had two
16 witnesses. We notified the Court just the
17 other day, that even those witnesses won't
18 be here. So, we are in a position of not
19 having any evidence to put before this
20 Honourable Court, as of now.

21
22 Your Honours, two things remain to be said.
23 First, we will review the situation in the
24 next 24 or 48 hours, to see whether or not
25 we can do without these two witnesses, and

1 we will come back to this Court and either
2 inform the Court that we need those two
3 witnesses or that we close our case.
4 Second, we won't be able to call the alibi
5 witnesses in the course of this case. What
6 I mean by the alibi witnesses -- I don't
7 mean my learned friend's witnesses, but,
8 rather, those witnesses who would rebut the
9 alibi. We will asking at the appropriate
10 time because of the circumstances, that we
11 call any evidence in rebuttal at the close
12 of the accused's case.

13
14 Your Honours, we can't take the matter any
15 further than that, but, my learned leader
16 wants to address the Court on some matters
17 as well.

18 MR. PRESIDENT:

19 Thank you, Mr. Fleming.

20

21 Yes, Madam Prosecutor.

22 MS. DEL PONTE:

23 Thank you, Mr. President. It is simply to
24 add on to the points made by my colleague.

25 The two witnesses who are not appearing

1 today, were contacted on the 5th of April,
2 that is last time, to try to persuade them
3 to come. And they said unequivocally, that
4 they did not come because they heard over
5 the radio that the association of survivors
6 had indicated that they should not appear.
7 In other words, they are absolutely ready to
8 appear but they are waiting for it to be
9 said over the radio that witnesses can
10 appear before this Court. Just to tell you
11 that all had been done on our part, to
12 ensure that these witnesses appear.

13
14 On the letter of the registry, a response
15 had been addressed to the registry and I
16 have a copy of a letter from the Rwandan
17 Minister of Justice dated 5th April and it
18 reached the Tribunal on the 6th of April,
19 and it is stated by the Minister of Justice
20 that, well, his services are absolutely
21 ready to assist our institution -- your
22 institution to resolve the delicate problem
23 that slows down the course of justice and I
24 am quoting: "It would be proper, says the
25 Minister of Justice, for us to reflect

1 together as to concrete ways and means to
2 expedite the course of justice".

3
4 In other words, therefore, the Minister of
5 Justice, Mr. President, is asking that we
6 re-establish dialogue, taking into account
7 the positions adopted by each of the parties
8 and the concerns that I have expressed, by
9 those parties. That is what I have to say
10 with respect to that problem.

11
12 As far as I am concerned, I also would like
13 to say that the appearance of witnesses is
14 crucial here. We are talking about it today
15 but there would be other trials that are
16 going on and that would be facing the same
17 problem.

18
19 And so, it is important that we monitor
20 closely and deploy our efforts to ensure
21 that these victims and witnesses appear.
22 Obviously, we know that it is incumbent on
23 the Tribunal to protect the witnesses,
24 particularly under Article 21 of the
25 Statute.

1 There is also a moral obligation on our
2 part; we are all here to work along those
3 lines. And, it is my view that if the
4 registry would need our services, our
5 contribution, we would be prepared to
6 discuss with that association.

7
8 Mr. President, that is not the point I
9 wanted to make with respect to the need for
10 witnesses. It would be -- may be difficult
11 within 24/48 hours to provide an answer.
12 Maybe we might come to a situation where we
13 might close our case, better we still feel
14 that we should maintain our request for
15 cooperation. Thank you, Mr. President.

16 MR. PRESIDENT:

17 Thank you, learned Madam Prosecutor.

18

19 Yes, Professor Hinds?

20 PROFESSOR HINDS:

21 Good morning, Your Honours. Mr. Kajelijeli
22 appreciates the problem faced by the
23 Prosecutor concerning the witnesses, and,
24 we'd just like to offer any assistance that
25 we can to facilitate this matter. Let me

1 just deal seriatim with the comments made by
2 Mr. Fleming.

3
4 Of course, we were not aware until this
5 morning -- at this moment that the
6 Prosecutor was having any problems. I flew
7 in from New York over the weekend. I am not
8 sure that I would have done anything
9 different, but, nevertheless, I flew in from
10 New York and spent up to 2 o'clock this
11 morning working on cross-examination
12 questions. But, be that as it may, I had to
13 do it anyhow.

14
15 The problem with the alibi witnesses, I
16 think that Mr. Fleming is correct, as he
17 traced the history and certainly what was
18 put on the record by us with respect to
19 that.

20
21 The trial began in July and on July 9th, we
22 attended about four days after this trial
23 began, pursuant to the order of this Court,
24 we filed a notice of alibi. It is true that
25 we set out the parameters as is established

1 by Rule 67(a)(ii) with respect to what is
2 required. Since the alibi witnesses were
3 protected witnesses, we only gave the
4 pseudonyms. But, we, of course, recorded
5 with the registrar the identities of these
6 individuals.
7
8 During that time period, we indicated to
9 Mr. Fleming and to the Prosecutor's office
10 that we would not disclose the identity of
11 these witnesses, unless the protections were
12 established in this Court's order of April
13 3rd, 2001. That did not take place before
14 January or just about the first part of this
15 year.
16
17 Quite frankly, looking at Rule 85 and
18 particularly Rule 85(a) it was our -- we
19 certainly didn't see that the Prosecutor was
20 prejudiced in any way with respect to
21 presenting any rebuttal with respect to our
22 alibi testimony. I certainly -- this Court
23 felt and we agreed that we should provide a
24 notice of alibi in sufficient time, so that,
25 if the Prosecutor wanted to, on their case

1 in-chief, they may do whatever they wanted
2 to do in that regard. But, certainly, the
3 Rules provide for rebuttal testimony and we
4 understand that Mr. Fleming would be making
5 the necessary application. But, we could
6 say, from the standpoint of the Defence,
7 that we would not oppose that. We think
8 they have a right to rebuttal testimony,
9 certainly with respect to this issue and in
10 light of the problems that they are facing
11 at this point.

12
13 The problem of cooperation between the
14 Rwandan -- the sovereign state of Rwanda and
15 this Tribunal, pursuant to the cooperation
16 agreements signed by the United Nations and
17 this Court, is of paramount interest to the
18 Defence and it is of paramount interest to
19 justice.

20
21 I join with Madam Prosecutor in the
22 application for cooperation. We cannot have
23 any justice done in this case without
24 adequate cooperation. What does that mean?
25 Not only cooperation for the Prosecutor and

1 we think that there should be cooperation in
2 the individuals, representatives from the
3 government of Rwanda in providing all of
4 assistance, but also more critically,
5 cooperation with respect to the Defence.
6 This Tribunal may be aware, I went to Rwanda
7 within the last ten days.
8
9 I wrote to the Ministry of Justice asking
10 for permission to go into the prisons to see
11 witnesses. They gave me authorisation to do
12 so, when -- I spent money and time
13 travelling from New York, Nairobi, Kigali
14 and into Ruhengeri. When I got there, they
15 told me at the last minute in the evening,
16 "Yes, you can go in". I went in, I spent
17 one hour trying to interview witnesses. The
18 next morning, I was told: " You no longer
19 have any approval".
20
21 After spending time, money, travelling
22 there, I then ended not being able to
23 interview the witnesses. At the same time,
24 I requested authorisation to obtain certain
25 documents which is an ongoing concern that

1 we have, given the fact that we believe that
2 they are exculpatory information in the --
3 pre this trial, statements that were made by
4 Prosecution witnesses, who are detained
5 witnesses in Rwanda. We have had extensive
6 hearings before this Tribunal with respect
7 to those particular matters. The problem
8 that we have is that the Prosecutor-General
9 in Rwanda has just taken a position that
10 they would not disclose that information.
11 Compounding that problem, this Court is
12 aware that we have witnesses who alleged
13 that they have been intimidated and harassed
14 after we have seen them by the Deputy
15 Prosecutor in Ruhengeri. All of these
16 issues go to what? Go to the question of
17 cooperation, so that we can have a common
18 objective which is justice to be done.

19
20 I stand here today, joined with the
21 Prosecutor, because it is a serious problem
22 and we anticipate even more problems for the
23 Defence, because I have made four trips,
24 probably more than any Defence lawyer to
25 Rwanda and we have a number of witnesses who

1 are there. There will be different types of
2 problems, I anticipate, unless we have
3 cooperation. The cooperation that we are
4 concerned about is that people are not
5 intimidated and able to come here freely and
6 say what they have to say, tell the truth,
7 be subject to cross-examination and let this
8 Court make a decision.

9
10 We must -- we must be able to have the kind
11 of cooperation so that justice is done and I
12 sympathise with the Prosecution's problems
13 today, because I know, on my shoulders, it
14 would be ten times tomorrow, and so, it is a
15 problem. I don't know how we solve it and I
16 agree, that, given a sovereign state, there
17 are no coercive powers that this Tribunal
18 has. But, the issue transcends just this
19 case, there are other cases and there must
20 be an understanding by even these NGOs that
21 they cannot hold justice hostage, that there
22 must be an agreement whether they like the
23 decisions by this Tribunal or not, they
24 cannot intimidate the Court, they cannot
25 intimidate the process and they cannot

1 proceed this way and someone has to make
2 this clear that this process has to go
3 forward for both sides.
4

5 And, so, I apologise for trespassing on the
6 Court's patience, but it is problem that I
7 see that we are going to have. We stand
8 ready to assist in any way that we can, in
9 this endeavour with respect to moving the
10 matters forward. Thank you, Your Honour.

11 MR. PRESIDENT:

12 Thank you, Professor Hinds, learned counsel.
13

14 Do you have any comment, Mr. Fleming, on
15 this matter? Madam Prosecutor?

16 MS. DEL PONTE:

17 Yes, Mr. President, I have listened with a
18 lot of attention to my colleague of the
19 Defence, and I fully agree with him on the
20 fact that he has to have access to Defence
21 witnesses.
22

23 Now, specifically with respect to access to
24 the files of witnesses, witnesses who are
25 accused before the Rwandan Courts and for

1 whom investigations are going on, I had
2 raised this matter with Prosecutor Gahima
3 and it would appear that indiscriminate
4 access to files is not allowed. This is --
5 we have to live with this because in
6 national systems, ongoing investigations
7 prohibit a third party from having
8 indiscriminate access to files.
9
10 What can be done, Mr. President, is for the
11 Defence to clearly indicate what it would
12 like to have as documents that would be
13 useful to them, you know -- specific
14 requests like minutes or witness statements
15 or if they are aware of any other
16 documentation, but then they have to be
17 specific and I could personally insist with
18 the Prosecutor Gahima a sort of rogatoire
19 commission, requiring assistance, mandatory
20 assistance from the Prosecutor or the State
21 Prosecutor.
22
23 Now, regarding these witnesses, a lot of
24 them are in detention. They haven't yet
25 come before the courts. I can understand

1 that Defence counsel faces a lot of
2 difficulties when he goes to Rwanda. I can
3 understand that because I personally faced a
4 lot of difficulties at a certain period, and
5 I don't understand, maybe I should put the
6 question to you, sir. Wouldn't it be some
7 solution, for instance, to ask that these
8 witnesses be transferred to Arusha so that
9 the Defence would have free access without
10 any interference by anyone to create an
11 impediment to such access?

12
13 I am aware, Mr. President, that this is a
14 matter that may be or may not be possible in
15 technical terms, but, it is aimed at
16 ensuring that the Defence have free access
17 to these witnesses. I would be ready to get
18 in touch with our contact, the Rwandan
19 authorities and it would therefore not be
20 necessary for the Defence to embark on a
21 trip to Rwanda, you know -- so that if they
22 come here, for instance, they would have
23 access to these witnesses. That is a
24 possible suggestion that I have, that is
25 with respect to alibi and alibi evidence. I

1 think we all agree this will be done at the
2 conclusion of Defence case, of course.

3 Thank you, Mr. President.

4 MR. PRESIDENT:

5 Thank you, Madam Prosecutor.

6

7 Professor Hinds, do you have any --

8 PROFESSOR HINDS:

9 Thank you, Your Honour. I appreciate the
10 proposals made by Madam Prosecutor and we
11 will take them up with our client to see
12 whether or not there can be some joint
13 cooperation in that regard, because it may
14 solve that part of the problem.

15

16 Perhaps, Mr. Fleming might be so kind to
17 share with Madam Prosecutor, our specific
18 request that we made concerning documents,
19 that is the document request, so that she
20 may be able to look at the specificity of
21 the request that we made, because I agree
22 with her, that we should not be talking
23 about wholesale looking through any files.
24 But we specifically requested documents
25 relating to particular witnesses and not

1 just all documents, we were specific with
2 respect to confessions that were made,
3 statements that were made by those witnesses
4 and those of witnesses who appeared here, to
5 testify for the Prosecution. And, we
6 believe, that we are entitled to that
7 information and the information was fairly
8 specific. And, we would even be prepared if
9 there are any security concerns raised by
10 the Rwandan authorities that they need to
11 redact some information or that some
12 information -- they do not want us to have,
13 but the Court may, in fact, look at it in
14 camera, we have no problem with that either.

15
16 If we can work these things out, but, just
17 simply not to provide the document, forces
18 us at some point in time to move for a
19 motion to strike the testimony of all those
20 witnesses, because, right now, what we have
21 is part of their testimony and not all of
22 it.

23
24 So, if we can find some way of sorting out
25 these problems, again, in the spirit of

1 cooperation, we stand willing and able to
2 participate. Thank you.

3 MR. PRESIDENT:

4 Thank you, Professor Hinds.

5
6 We would like to thank the Prosecution and
7 indeed, the Defence for the comments that
8 have been made in the course of this
9 session. We would like to make the
10 following observations.

11
12 The first one with regard to the case of --
13 to the issue of alibi, the Prosecution and
14 the Defence, Professor Hinds has clearly
15 indicated what possible course of action
16 that could be taken. We will wait to see
17 how things shape up in the course of the
18 remaining part of this trial. That is the
19 most that we can say on that particular
20 issue.

21
22 With regard to the issue of the witnesses
23 who are linked up to this particular
24 session, we take note of the observation as
25 put across by the Prosecution and, indeed,

1 the observation made by the Defence on this
2 particular question.

3
4 We would like to observe first, that,
5 indeed, in the course of collective work and
6 collective responsibility to do justice in
7 matters before this Tribunal, and, indeed,
8 for the course of international criminal
9 justice, the cooperation and the assistance
10 of states in whole is of utmost importance
11 and necessary and that, of course, would
12 include the Rwandan state.

13
14 So, we will urge that all that needs to be
15 done, to facilitate and to enhance the
16 cooperation of states in this regard, should
17 be done and all efforts should be undertaken
18 to see that it is done, and, in that regard,
19 we would appreciate any action that is being
20 taken by the registry, as well as in this
21 particular aspect, by the Prosecution on
22 their side, to ensure that these particular
23 witnesses are able to come and testify
24 before the Tribunal.

25

1 We will say no more on this matter at this
2 particular stage, and the Trial Chamber is
3 willing and thus grant a requested time by
4 the Prosecution as indicated by Mr. Fleming,
5 to deal with this issue in the next 20 or 48
6 hours. We will wait to be appraised of what
7 happens.

8
9 If there is further time required, we will
10 see what needs to be done, because it is an
11 extremely important matter, it can't just be
12 left like that.

13
14 Thirdly, the Trial Chamber appreciates
15 tremendously the thought that has been put
16 across by the Prosecution, Madam Prosecutor
17 herself and, indeed, as reacted on by the
18 Defence, Professor Hinds, with regard as to
19 what could be done to deal with some of the
20 issues that have been outstanding and keep
21 cropping up here and there, in the course of
22 the proceedings before this particular
23 Trial Chamber, and, indeed, before the
24 Tribunal as a whole.

25

1 So, I hope they will be crystalised. It
2 would interest to see how they develop on
3 the ground and see how they can be
4 ventilated before the Trial Chamber.

5
6 We seriously take note of those observations
7 with the appreciation and we hope they will
8 be followed up.

9
10 So, that being the case, the proceedings as
11 far as today end here and we wait to be
12 appraised of the developments with regard to
13 the two witnesses in the course of the time.

14
15 Mr. Fleming, should we come back here on
16 Wednesday, would that be sufficient time?
17 We'd like to see how things are developing
18 on the ground with regard to the witnesses.

19 MR. FLEMING:

20 Your Honours, there might be some
21 difficulties with that. The Prosecutor has
22 suggested to me that I was somewhat
23 optimistic in my time frame.

24 MR. PRESIDENT:

25 All right. How long?

1 MR. FLEMING:

2 She did it very kindly.

3 MR. PRESIDENT:

4 How long? I know, perhaps -- how much time?

5 MR. FLEMING:

6 I realise that we have to bring the issues
7 to a conclusion.

8

9 Your Honour, we may be able to inform the
10 Court as to whether or not we need these
11 witnesses quickly, and that would bring that
12 issue to a head.

13 MR. PRESIDENT:

14 When do you plan to do that?

15 MR. FLEMING:

16 We can do that within the 24 hours.

17 MR. PRESIDENT:

18 Then, I think we will keep Wednesday for all
19 possible information.

20 MR. FLEMING:

21 Thank you, Your Honours. There is one
22 associated issue. Your Honours might recall
23 that Professor Hinds has requested that --
24 at least posed the possibility that some of
25 the witnesses would be recalled, that is

1 tied into the problem of receiving
2 documentation from Rwanda. Those witnesses
3 are still here and have been here for a long
4 time. So, I will raise that issue with
5 Professor Hinds as well and see if we can
6 resolve that. Thank you.

7 MR. PRESIDENT:

8 All right. Then these proceedings stand
9 adjourned until Wednesday morning at 9:30.

10

11 Until then, these proceeding stand
12 adjourned.

13 (Court adjourned at 1015H)

14

15 (Pages 1 to 27 by Sithembiso Moyo)

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I, Sithembiso Moyo, Official
Court Reporter for the International Criminal
Tribunal for Rwanda, do hereby certify that the
foregoing proceedings in the above-entitled
cause were taken at the time and place as
stated; that it was taken in shorthand
(stenotype) and thereafter transcribed by
computer under my supervision and control; that
the foregoing pages contain a true and correct
transcription of said proceedings to the best
of my ability and understanding.

I further certify that I am not of
counsel nor related to any of the parties to
this cause and that I am in nowise interested
in the result of said cause.

Sithembiso Moyo (pages 1 to 27)