



**TRIAL CHAMBER II**

OR:ENG.

Before: Judge William H. Sekule, Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal H. Khan

Registry: Mr. John M. Kiyeyeu

**THE PROSECUTOR**  
*versus*  
**GRATIEN KABILIGI**

Case No. ICTR-97-34-I

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**DECISION ON THE DEFENCE MOTION FOR THE RESTITUTION OF ITEMS AND DOCUMENTS SEIZED**

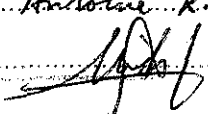
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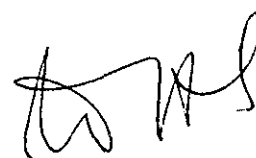
**The Office of the Prosecutor:**

Mr. William T. Egbe  
Mr. Chile Eboe Osuji

**Counsel for the Accused:**

Mr. Jean Yaovi Degli

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: .....	Antoine Kim M. MINDUA.....
SIGNATURE: .....	 05.10.1998



**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“the TRIBUNAL”)**

SITTING AS Trial Chamber II , composed of Judge William H. Sekule Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal H. Khan ( the“Trial Chamber”);

CONSIDERING the indictment submitted by the prosecutor against Gratién Kabiligi which was confirmed on 15 October 1997 by Judge Aspegren pursuant to rule 47 of the Rules of Procedure and Evidence (the “Rules”), on the basis that there was sufficient evidence to provide reasonable grounds for believing that the accused committed genocide, conspiracy to commit genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and Additional Protocol II thereto;

CONSIDERING the preliminary motion filed by the defence seeking an order pursuant to rule 40 (C) and 73(A) of the Rules nullifying proceedings and declaring illegal and inadmissible evidence obtained from the accused;

CONSIDERING the response to the aforementioned motion made by the Prosecutor during the hearing of this motion on 11 May 1998 in which, the Prosecutor argued that seizure of the accused property was done in accordance with the law and the evidence so collected is valid;

CONSIDERING the provisions of rule 40(C) and 73(A) of the Rules of Procedure and Evidence regarding rights of suspects at investigation stage;

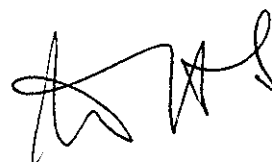
HAVING HEARD the parties on 11 May 1998.

**THE DEFENCE ARGUED THAT:**

- (a) The accused arrest was done in violation of rule 55 (B) of the Rules and Article 9 (2) of the International Covenant on Civil and Political Rights in that: he was not informed of the reasons for his arrest; his documents were illegally seized during the search; no inventory of the seized items was provided by the Prosecution;
- (b) Rule 42 (A) of the Rules was violated because the accused was not informed of his rights under the rule when read together with rule 55 of the Rules;
- (c) Failure to inform the accused of his rights deprived him of his right to assess whether it was necessary to request the assistance of a lawyer or appropriate to answer questions;
- (d) These violations, the Defence argues, make the questioning of General Kabiligi on 19 July 1997 null and void and inadmissible in evidence.

**THE PROSECUTOR IN RESPONSE ARGUED THAT:**

The arrest of accused, seizure of his property and interrogation was done in accordance with the law, in particular the provision of Article 17(2) of the Statute and rules 39(i) and 40(A)(ii) of the Rules which authorise the Office of the Prosecutor to take physical evidence in the course of investigation and



preparation of an indictment. This right was exercised by the Prosecutor within the legal framework and, therefore, cannot be said to be a nullity.

## **DELIBERATIONS**

WHEREAS the Defence has invited the Chamber to rule that seizure of the applicant's personal effects was illegal under the provisions of rule 5 of the Rules and declare the exercise a nullity, and to order the restitution of the seized property;

WHEREAS the provision of article 17(2) of the Statute and rules 39(i) and 40(A)(ii) authorise the Office of the Prosecutor to take physical evidence in the course of investigation and preparation of an indictment which right was exercised by the Prosecutor. It is not mandatory under these rules to provide an inventory of items seized, however, it is the practice in international criminal jurisdiction for an inventory to be made which will guarantee the integrity of the property seized and guarantee the rights of the accused;

OBSERVING the need for a balance between the rights of the Prosecutor and the Defence;

UNDERSCORING the right of the Defence under Rule 66(B) to inspect the documents at the earliest opportunity to enable preparation of the Defence case;

MINDFUL OF THE FACT THAT on the strength of rule 40 of the Rules, the Prosecutor has not violated any rights of the accused;

BEING AWARE that rule 5 of the Rules can be invoked only if the act complained of caused material prejudice to the accused. Rule 5 cannot be invoked in this case as the seizure of the said properties has not caused material prejudice and was done under the authority of rule 39(i) of the Rules;

NOTING that the applicant is at liberty to raise issues of admissibility of evidence under rule 95 of the Rules when the case is at a trial stage;

WHEREAS the Trial Chamber cannot at this stage nullify the seizure and the proceedings as the Trial Chamber has found no sufficient legal basis to justify such an order.

## **THE TRIAL CHAMBER TAKING INTO ACCOUNT THE ABOVE REASONING DECIDES AS HEREUNDER:**

1. Considering that there are no mandatory rules requiring the Prosecutor to provide an inventory of seized property, the Trial Chamber finds that the Prosecutor did not breach any specific article of the Statute or rule of the Tribunal by her failure to make an inventory. Accordingly, the items may be used as evidence.
2. That the Prosecutor having now supplied the initial statement of the accused to the Defence through the office of the registrar, the Defence's request is moot.
3. Having found that the seizure of property was done in accordance with the law, no order is made for nullification of proceedings or release of the accused.



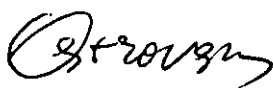
**FOR THESE REASONS THE TRIBUNAL,  
DECIDES:**

1. Directs the Prosecutor to return the originals of all documents which are not necessary for the trial, and supply attested copies of all those documents which the Prosecutor intends to use in the trial as the said copies may be useful for the Defence. The Prosecutor shall return and supply the said documents within 15 days from the date of this order.
2. Dismiss the Defence motion regarding all other matters.

Arusha, 5 October 1998.



William H. Sekule  
Presiding Judge



Yakov A. Ostrovsky  
Judge



Tafazzal Hossain Khan  
Judge

