

ICTR-99-52-1

31-01-2002

(26125-26123)

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International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

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TRIAL CHAMBER I

OR: ENG

Before: Judge Navanethem Pillay, presiding  
Judge Erik Møse  
Judge Asoka de Z. Gunawardana

Registry: Mr. Adama Dieng

Decision of: 31 January 2002

THE PROSECUTOR  
v.  
FERDINAND NAHIMANA  
HASSAN NGEZE  
JEAN BOSCO BARAYAGWIZA  
(Case No. ICTR-99-52-1)

2002 JAN 31 PM 5:15  
ICTR

**DECISION ON THE DEFENCE MOTION OPPOSING THE HEARING OF THE RUGGIU  
TESTIMONY AGAINST JEAN BOSCO BARAYAGWIZA**

The Office of the Prosecutor:

Mr. Stephen Rapp  
Mr. William Egbe  
Mr. Alphonse Van  
Ms. Charity Kagwi  
Ms. Simone Monasebian  
Mr. Elvis Bazaule

Counsel for the Accused:

Mr. Giacomo Barletta Caldarera  
Mr. Alfred Pognon

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: *Marianne Ben Solimo*  
SIGNATURE: *[Signature]* DATE: *1/02/02*

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

**SITTING** as Trial Chamber I, composed of Judge Navanethem Pillay, presiding, Judge Erik Møse, and Judge Asoka de Zoysa Gunawardana ("the Chamber");

**BEING SEIZED OF** a motion dated 16 January 2002 filed on 17 January 2002 by Counsel for Jean Bosco Barayagwiza opposing the hearing of the Ruggiu testimony;

**TAKING INTO ACCOUNT** the Prosecutor's response filed on 24 January 2002 in which she argues that the present motion lacks merit and should accordingly be denied;

**CONSIDERING** the rejoinder by the Defence filed on 28 January 2002, where it reiterated the arguments stated in the motion;

**NOW CONSIDERS** the matter solely on the briefs of the parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("the Rules").

### **SUBMISSIONS OF THE PARTIES**

#### **Submissions of the Defence:**

The Defence submits that since the Chamber had already evaluated Mr. Ruggiu's evidence during his sentencing, the Chamber will be influenced by its precedent decision. Hence the Judges will not be impartial judges. Furthermore, the Defence contends that a convicted person is not able to testify and collaborate with the Prosecutor, especially if he is a former co-accused. Moreover, Mr. Ruggiu reached an agreement with the Prosecutor to cooperate with the Prosecution after his conviction in order to obtain advantages regarding his prison treatment (such as serving the sentence in Belgium or Italy instead of Tanzania). Mr. Ruggiu's evidence in the media trial cannot be reliable because of his interest to accuse his former co-accused. Therefore, psychologically Mr. Ruggiu lacks the freedom to testify freely. For this reason, the Defence counsel requests the Chamber to change its opinion expressed in its former decision.

#### **Submissions of the Prosecutor:**

The Prosecutor in her reply contends, *inter alia*, that the Trial Chamber has already decided the matter raised by this motion. First, in its Decision of 11 September 2000, the Chamber denied a motion on a similar matter filed on the 7 September 2000 by Co-Counsel for Barayagwiza. Second, on 19 September 2000, the Chamber decided and denied a disqualification motion filed by Counsel for Nahimana dated 18 September 2000, which was conformed to and adopted by Counsel for Barayagwiza. Additionally, the Defence had knowledge of those previous decisions.<sup>1</sup> The Prosecutor argues that the Chamber has already ruled on the question whether Ruggiu may be called as a witness. The Prosecutor also contends that it is a trite principle of law that a matter, finally adjudicated on by a competent court of law may not subsequently be reopened or challenged as to the matter or point decided, by the original parties or their representatives in law, except on appeal.

### **DELIBERATIONS**

The Trial Chamber has considered the motion and response of the parties and notes that the Defence is again raising a motion, which it had moved once before and which was finally adjudicated by the Trial Chamber in its Decision of 19 September 2000. The Chamber particularly recalls its statement that:

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<sup>1</sup> Defence motion dated 16 January 2002, para 1.3, p. 1

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*"It is a common procedure in criminal trials that an accomplice turns state witness after entering a plea or after receiving a pardon. Furthermore, the Chamber is obliged pursuant to Rule 101(B)(ii), to take into account an Accused's cooperation with the Prosecutor.*

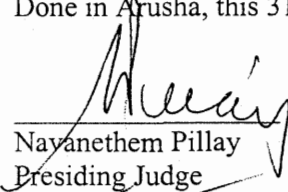
*In any event, the Defense is fully at liberty to cross-examine Ruggiu if he enters the witness box in this case and also to discredit his testimony in any manner the law permits. It is appropriate to note here that, according to the Defense submissions, nine binders containing interviews of Ruggiu have been supplied to the Defense by the Prosecutor and this undoubtedly will place the Defense at an advantage to question Ruggiu and test his veracity."<sup>2</sup>*

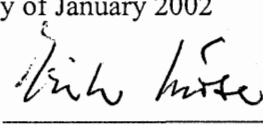
The Chamber concludes that the motion is frivolous pursuant to Rule 73(E) of the Rules.

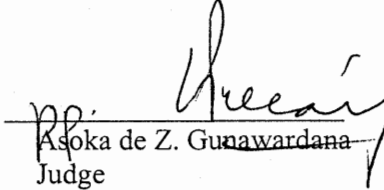
**FOR THE FOREGOING REASONS THE CHAMBER:**

1. **DISMISSES** the Defence motion.
2. **DIRECTS**, the Registrar, pursuant to Rule 73(E) of the Rules, not to pay to the Defence any fees or costs associated with this Motion.

Done in Arusha, this 31st day of January 2002

  
Navanethem Pillay  
Presiding Judge

  
Erik Møse  
Judge

  
Asoka de Z. Gunawardana  
Judge

(Seal of the Tribunal)



<sup>2</sup> Transcript 19 September 2000, pp. 21-22