

ICTR-99-52-T
(32640-32638)
05-06-2003

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 5 June 2003

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

**DECISION ON THE DEFENCE MOTION TO ADMIT INTO EVIDENCE
PROSECUTION WITNESS'S STATEMENTS; ALTERNATIVELY TO PRODUCE
ADDITIONAL DEFENCE WITNESSES**

Office of the Prosecutor:

Mr Stephen Rapp
Ms Simone Monasebian
Ms Charity Kagwi
Mr William Egbe

Counsel for Hassan Ngeze:

Mr John Floyd, III
Mr René Martel

Counsel for Jean-Bosco Barayagwiza:

Mr Giacomo Barletta-Caldarera

Counsel for Ferdinand Nahimana:

Jean-Marie Biju-Duval
Diana Ellis, Q.C.

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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:

1. The “Motion To Admit into Evidence Prosecution Witness’ Statements as Defence Exhibits and Motion to Produce Additional Defence Witnesses”, filed by the Ngeze Defence on 12 May 2003 (“the motion”); and
2. The “Prosecutor’s Response To Defense Motion”, filed on 15 May 2003 (“the response”);

CONSIDERING the relevant provisions of the Statute of the Tribunal (“the Statute”) and the Rules of Procedure and Evidence (“the Rules”), in particular, Rule 89(C).

HEREBY DECIDES the motion, pursuant to Rule 73(A) of the Rules, solely on the basis of written briefs filed by the parties.

SUBMISSIONS OF THE PARTIES

1. The Ngeze Defence seeks the admission into evidence of two statements, dated 4 May 1998 and 11 March 1999, of Prosecution Witness AER, who was ultimately not called by the Prosecution to testify. The Ngeze Defence argues that Witness AER contradicts the testimony given by Prosecution Witness AES regarding the shooting of a Tutsi girl by Ngeze. The Ngeze Defence maintains that it was directed by the Chamber, during its cross-examination of Witness AES, to put questions concerning discrepancies between Witness AER’s statements and Witness AES’s testimony to Witness AER when she would be called by the Prosecution. As Witness AER never testified, and the Ngeze Defence could not secure her appearance as a witness for the Ngeze Defence, the Ngeze Defence submits that it was deprived of an opportunity to challenge the statements of Witness AER, and the statement should be admitted for the purpose of evaluating the credibility of Witness AES. Alternatively, the Ngeze Defence seeks to call six additional factual witnesses, previously unknown to Counsel, to respond to the testimony of Witness AES.
2. The Prosecution opposes the motion as it argues that the Ngeze Defence had ample opportunity to cross-examine Witness AES on the content of the statements, even if it was not permitted to admit the statements. The Prosecution further argues that the statements are not reliable and therefore inadmissible under Rule 89(C). Responding to the alternative application to call six additional witnesses, the Prosecution opposes the application on the basis that the trial has already concluded.

DELIBERATIONS OF THE CHAMBER

3. Rule 89(C) provides that the Chamber “may admit any relevant evidence which it deems to have probative value.” The relevance or probative value of evidence is to be assessed in light of the particular circumstances of each case.

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4. The Chamber recalls its previous rulings to admit documents during cross-examination of a particular witness in order to contradict the direct evidence of that witness. The documents are admitted solely to contradict the witness's direct evidence given in oral testimony, and do not go to proof of the truth of the contents therein.

5. The Chamber notes that the Ngeze Defence seeks to admit the statements of Witness AER for the purpose of credibility assessment of Witness AES. The Chamber also notes that the Ngeze Defence had put the contents of the statements to Witness AES during cross-examination, but was not permitted to admit the statements as exhibits, as the Prosecution had indicated that it would call Witness AER as a witness during the trial, and therefore, the Chamber had directed that the statements should be dealt with during the testimony of Witness AER. The Ngeze Defence was unable to admit these statements when the Prosecution failed to call Witness AER.

6. Having considered the particular circumstances in this case, the Chamber allows the admission of the two statements of Witness AER insofar as they contradict the evidence of Witness AES, which statements fall to be considered during the Chamber's evaluation of the credibility of Witness AES. The statements do not go to proof of the truth of the contents in the statements.

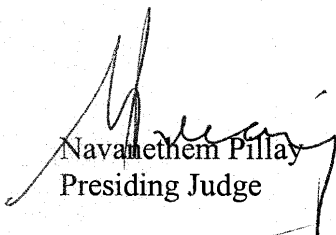
7. Given the decision to admit the statements of Witness AER, it is unnecessary for the Chamber to consider the alternative application to call six factual witnesses.

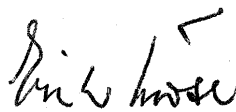
FOR THE ABOVE REASONS, THE TRIBUNAL

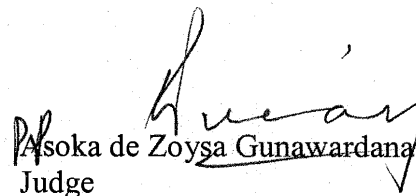
(a) **GRANTS** the motion to admit the two written prior statements of Witness AER dated 4 May 1998 and 11 March 1999;

(b) **DENIES** the alternative motion to call six factual witnesses.

Arusha, 5 June 2003


Navanethem Pillay
Presiding Judge


Erik Møse
Judge


Asoka de Zoysa Gunawardana
Judge

[Seal of the Tribunal]