

ICTR-99-50-T
11-62-2004
(12123 — 12120)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES



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TRIAL CHAMBER II

Before: Judge Asoka de Zoysa Gunawardana, Presiding
Judge Khalida Rachid Khan
Judge Lee Gacuiga Muthoga

Or: English

Registrar: Adama Dieng

Date: 11 February 2004.

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jerome BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-I

2004 FEB 11 P 3:20
ICTR

**DECISION ON BICAMUMPAKA'S MOTION
FOR JUDICIAL NOTICE**

Office of the Prosecutor:

Paul Ng'arua
Ibukunolu Babajide
Elvis Bazawule
George Mugwanya

Counsel for the Defence:

Michelyne C. St. Laurent for Casimir Bizimungu
Howard Morrison and Ben Gumpert for Justin Mugenzi
Pierre Gaudreau and Michel Croteau for Jerome Bicomumpaka
Tom Moran and Christian Gauthier for Prosper Mugiraneza

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II, composed of Judge Asoka de Zoysa Gunawardana, Presiding, Judge Khalida Rachid Khan and Judge Lee Gacuiga Muthoga (the “Trial Chamber”);

BEING SEIZED of “Motion of Defendant Bicamumpaka for Judicial Notice, Rule 94 of the Rules of Procedure and Evidence”, filed on 20 January 2004, (the “Motion”);

HAVING RECEIVED the “Prosecutor’s Response to Motion of Defendant Bicamumpaka For Judicial Notice” filed on 26 January 2004;

CONSIDERING the matter pursuant to Rule 94(B) of the Rules of Procedure and Evidence (the “Rules”), solely on the basis of the written submissions of the Parties.

ARGUMENTS OF THE PARTIES

Defence Submissions

1. The Defence seeks that the date on which Juvénal Kajelijeli was appointed *bourgmestre* of Mukingo *commune*, that is 26 June 1994, be taken judicial notice of as an adjudicated fact by the Trial Chamber. According to the Defence, the fact was adjudicated by Trial Chamber II in paragraphs 6 and 268 of the Judgment in *Prosecutor v. Kajelijeli* of 1 December 2003.

Prosecution Submissions

2. The Prosecutor submits that the exact date on which Juvénal Kajelijeli was appointed *bourgmestre* of Mukingo *commune* cannot be judicially noticed as requested by the Defence because the fact has not acquired the status of common knowledge. Consequently, the Prosecutor prays the Chamber to dismiss the Defence Motion.

DELIBERATIONS

3. Rule 94 (B) of the Rules reads as follows:

(B) At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings.

4. Rule 94 (B) does not delimit the nature or scope of “adjudicated facts”. Nevertheless, “adjudicated facts” has been defined as including within its ambit those facts which have been finally determined in a proceeding before the Tribunal.¹ The Trial Chamber may at the request of a Party or *proprio motu* take judicial notice of any facts or documentary evidence which has been adjudicated upon in proceedings before this Tribunal, if such facts or documentary evidence relate to the matter at issue in the proceedings before it.²

5. The Trial Chamber finds that an adjudicated fact is one upon which it has deliberated, and thereupon made a finding in proceedings that are final, in that no appeal has been instituted therefrom or if instituted, the facts have been upheld.

6. The Trial Chamber recalls that the Appeals Chamber has considered that “a request must specifically point out the paragraph(s) or parts of the judgement of which it wishes judicial notice to be taken, and refer to *facts*, as found by the trial chamber”.³ In this case, the Trial Chamber notes that the Defence has set out the facts and the paragraphs of the Judgment of which it wishes this Chamber to take judicial notice of under the Rule 94 (B).

7. The Trial Chamber notes that the fact sought to be judicially noticed was adjudicated in paragraphs 6 and 268 of the Judgment in *Prosecutor v. Kajelijeli* of 1 December 2003. Nevertheless, the Chamber does not deem it proper to consider as an adjudicated fact an issue which is yet to be settled by way of a possible review by the Appeals Chamber, or on which the right of appeal has not yet been exhausted.⁴ The Chamber notes that “such decision must be conclusive in that it is not under challenge before the Appeals Chamber or, if challenged, the Appeals Chamber upheld it”.⁵

8. The Trial Chamber notes that the Judgment in *Prosecutor v. Kajelijeli* is still the subject of appeal by the Accused as well as by the Prosecutor⁶. For that reason the facts contained in the Kajelijeli Judgment are not “adjudicated facts” within the meaning of the Statute. Therefore the Chamber is of the view that, this motion should be dismissed because the finality required has not been reached on the fact that is required to be taken judicial notice.

¹ *The Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10-T, “ Decision on the Prosecutor’s Motion for Judicial Notice of adjudicated facts”, 22 November 2001, para. 26. (the “*Ntakirutimana* Decision”). *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, “ Decision on the Prosecutor’s Motion for Judicial Notice and Admission of Evidence”, 15 May 2002, para. 39. *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, “ Decision on Prosecution’s Motion for Judicial Notice Pursuant to rules 73, 89 and 94”, 2 December 2003, para. 34. (the “*Bizimungu* Decision”).

² The “*Nyiramasuhuko* Decision”, para. 40.

³ *Prosecutor v. Zoran Kupreskic et al.*, Case No. ICTY-IT-95-16, “ Decision on the Motions of Drago Jospovic, Zoran Kupreskic and Vlatko Kupreskic to admit additional evidence pursuant to rule 115 and for judicial notice taken pursuant to rule 94 (B)”, 8 may 2001, para. 12. (the “*Kupreskic* Decision”).

⁴ The *Kupreskic* Decision, para. 6.

⁵ The *Bizimungu* Decision, para. 34; the *Ntakirutimana* Decision, para. 26.

⁶ *Juvenal Kajelijeli v. The Prosecutor*, Case ICTR-98-44A-A, Notice of Appeal, 31 December 2003; *The Prosecutor v. Juvenal Kajelijeli*, Case ICTR-98-44A-A, Prosecution’s Notice of Appeal, 5 January 2004.

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FOR THE ABOVE REASONS, THE TRIBUNAL:

DENIES the Motion in its entirety.

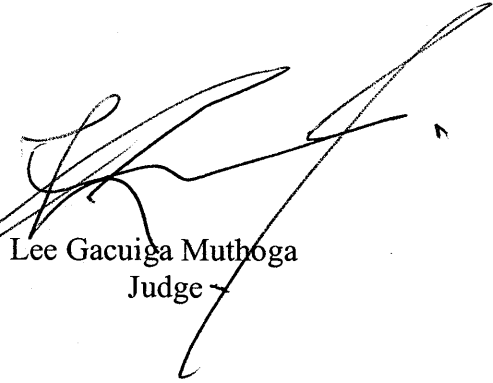
Arusha, 11 February 2004.



Asoka de Zoysa Gunawardana
Presiding Judge



Khalida Rachid Khan
Judge



Lee Gacuiga Muthoga
Judge

