



ICTR-96-10-A & ICTR-96-17-A
 05 July 2004
 (6561/H - 6559/H)
 International Criminal Tribunal for Rwanda
 Tribunal Pénal International pour le Rwanda

6561/H
 RMM

Before:

Judge Theodor Meron, Presiding Judge
 Judge Florence Mumba
 Judge Mehmet Güney
 Judge Wolfgang Schomburg
 Judge Inés Mónica Weinberg de Roca

Registrar:

Mr. Adama Dieng

Date:

5 July 2004

ICTR Appeals Chamber

Date: 05 July 2004

Action: PG

Copied To: Concerned Judges
 Parties, Judicial Arch
 LOs, LSS

THE PROSECUTOR

v.

Elizaphan NTAKIRUTIMANA and Gérard NTAKIRUTIMANA

Cases No. ICTR-96-10-A and ICTR-96-17-A

DECISION ON REQUEST FOR ADMISSION OF ADDITIONAL EVIDENCE

Counsel for the Prosecution

Mr James Stewart

Counsel for the Accused

Mr David Jacobs
 Mr Ramsey Clark

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: ROSETTE MUZIGO-MORRISON	
SIGNATURE: [Signature]	DATE: 05/07/04

6560/H

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 is seised of the "Urgent Consolidated Defence Motion for the Admission of Additional Evidence Pursuant to Rule 115", filed confidentially by Gérard and Elizaphan Ntakirutimana ("Appellants") on 03 June 2004 ("Motion"), and of the "Motion for the Admission and Full Consideration of Additional Evidence Not Available at Trial Pursuant to Rule 115 of the Rules of Procedure and Evidence," filed confidentially by the Appellants on 23 June 2004 ("Second Motion").

2. In the Motion the Appellants request (i) an order from the Appeals Chamber for the admission of additional evidence pursuant to Rule 115 of the Rules of Procedure and Evidence, (ii) an order permitting the filing of an addendum to their Appeal Briefs, (iii) an order for permitting filing of oversized motion, (iv) a reconsideration by the Appeals Chamber of its Decision on Request for Additional Evidence¹ ("Rule 115 Decision"), and (v) a hearing of the Motion. The Appellants seek to have admitted as additional evidence (i) a statement dated 13 and 14 January 2004 and transcripts of the testimony of Witness KJ (Witness OO in the instant case), who testified in the case of *Bagosora et al.* from 19 to 27 April 2004,² and (ii) the transcripts of the testimony of Witness AT (Witness GG in the instant case) who testified in the *Muhimana* case on 19 and 20 April 2004.³

3. The Prosecution, in its response filed on 14 June 2004,⁴ argues that the Motion of the Appellants should be dismissed in its entirety, although it does not object to the page extension. The Prosecution is content that the Motion be decided without oral hearing.

4. In the Second Motion the Appellants request admission of materials from proceedings before a United States Immigration Court in a case involving several individuals who testified as witnesses at the Appellants' trial;⁵ transcripts of the testimony of Witness BH (Witness DD in the instant case), who testified in the *Muhimana* case on 8 April 2004 and transcripts of the testimony of Witness BI (Witness YY in the instant case), who testified in the *Muhimana* case on 8 April

¹ Decision on Request for Additional Evidence, dated 08 April.

² Prosecutor vs. Théoneste Bagosora et al. "Military I", Case No. ICTR-98-41-T.

³ Prosecutor vs. Mika Muhimana, Case No. ICTR-95-1B-T.

⁴ Prosecution Response to Defense Urgent Consolidated Motion for the Admission of Additional Evidence Pursuant to Rule 115, dated 14 June 2004.

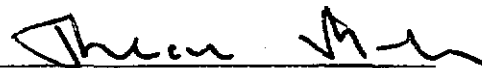
⁵ Stating that the record of the immigration proceedings is not public, the Appellants' Second Motion refers to the immigration proceedings by an alias *In the Matter of AAA*. The Appeals Chamber does the same in this Decision.

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2004. The Prosecution opposes the request and argues that the Second Motion should also be dismissed.⁶

5. The Appeals Chamber decides both motions on the basis of the Parties' written submissions.⁷ Finding both motions to be timely within the meaning of Rule 115, the Appeals Chamber concludes that the evidence which the Appellants seek to have admitted does not meet the criteria of admissibility under Rule 115. The Appeals Chamber is also not persuaded by the Appellants arguments that it should reconsider its previous Rule 115 Decision in this case, wherein the Appeals Chamber dismissed the Appellant's argument that the witness presented inconsistent evidence in this case and in *Niyitegeka*. The Appeals Chamber therefore **DISMISSES** the Motion and the Second Motion. The reasons for the Appeals Chamber's decision will be provided at a later date.

Done in French and English, the English text being authoritative.


Theodor Meron
Presiding Judge

Done this 5th day of July 2004,
At The Hague,
The Netherlands.

[Seal of the International Tribunal]



⁶ Prosecution Response to Motion for the Admission and Full Consideration of Additional Evidence Not Available at Trial Pursuant to Rule 115, filed as confidential on 29 June 2004.

⁷ Including "Defence Reply to the Prosecution Response to the Urgent Consolidated Defence Motion for the Admission of Additional Evidence Pursuant to Rule 115" dated 18 June 2004, ("Reply") and "Reply to Prosecutor Response to Appellants Motion of June 23, 2004 for the Admission and full Consideration of Additional Evidence not Available at Trial Pursuant to Rule 115 of the Rules of Procedure and Evidence and Motion for an Order authorizing the Filing of Additional Evidence in Excess of Page Limitations", dated 3 July 2004.