

ICTR-99-50-T
30-11-2004
(19421 — 19418)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr Adama Dieng

Date: 30 November 2004

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jérôme-Clément BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2004 NOV 30 P 3:59

**DECISION ON CASIMIR BIZIMUNGU'S MOTION TO DECLARE PART OF
THE TESTIMONY OF WITNESS GTD INADMISSIBLE**

Office of the Prosecutor:

Mr Paul Ng'arua
Mr Ibukunolu Babajide
Mr Justus Bwonwonga
Mr Elvis Bazawule
Mr Shyamlal Rajapaksa
Mr William Mubiru
Mr Olivier De Schutter

Counsel for the Defence:

Ms Michelyne C. St. Laurent and Ms Alexandra Marcil for Casimir Bicamumpaka
Mr Pierre Gaudrequ and Mr Michel Croteau for Jérôme-Clément Bicamumpaka
Mr Ben Gumpert for Justin Mugenzi
Mr Tom Moran and Mr Christian Gauthier for Prosper Mugiraneza

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

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga, and Judge Emile Francis Short (the "Chamber");

SEISED of the "*Requête de Casimir Bizimungu visant à s'opposer aux extraits de la déposition du témoin GTD qui concernent André Ntagerura*", filed on 7 July 2004 (the "Motion");

HAVING RECEIVED

- (i) The "Prosecutor's Response to the *Requête de Casimir Bizimungu visant à s'opposer aux extraits de la déposition du témoin GTD qui concernent André Ntagerura*", filed on 2 August 2004 (the "Response");
- (ii) "*Réplique de Casimir Bizimungu à la Requête de Casimir Bizimungu visant à s'opposer aux extraits de la déposition du témoin GTD qui concernent André Ntagerura*", filed on 18 August 2004 (the "Reply");

HEREBY DECIDES the Motion on the basis of the written briefs of the Parties, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the "Rules").

SUBMISSIONS

Relief Sought by the Defence

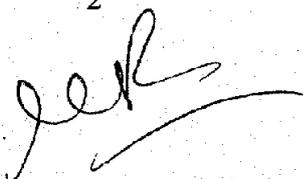
1. The Defence requests the Chamber to declare inadmissible part of the testimony given by Prosecution Witness GTD, on 5 July 2004, in relation to events at a roadblock involving the Accused.

Supporting Arguments

2. The Defence submits that the objectionable part of Witness GTD's testimony supports facts related to the Accused that are not alleged in either of Witness GTD's two witness statements.¹

3. The Defence argues that to admit Witness GTD's testimony about new material facts that were not directly linked to facts related in Witness GTD's witness statements violates the Accused's fundamental right to be informed in detail of the nature and cause of the charges against him so as to adequately prepare his defence, as guaranteed by Article 20 (2) and (4) (a), (b), and (e) of the Statute of the Tribunal.

¹ Witness GTD's first witness statement is dated 2 and 4 December 2003 and 27 and 30 January 2004; his second witness statement is dated 3 and 8 July 2004.



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4. The Defence maintains that the Prosecution has failed to respect its obligation to disclose material facts relative to Witness GTD's testimony, in violation of Rules 66 and 67 (D) of the Rules. According to the Defence, no witness statements or a willsay statement indicated that Witness GTD would mention the Accused in his testimony. Consequently, "[t]his is why the Defence was taken by surprise"² and did not raise objections in court or conduct an adequate cross-examination of Witness GTD. Similarly, the Defence states that it did not object to the evidence of Witness GTD before his testimony, because "[t]he name of Minister André Ntagerura is never mentioned in the Witness Statements of Witness GTD".³

5. According to the Defence, the jurisprudence of the Tribunal is clear that a Party may raise an objection to the evidence of a witness even after the witness's testimony has been given. In the present case, Witness GTD was still testifying before the Chamber when the Defence filed its Motion, dated 7 July 2004, for exclusion of evidence.

7. The Defence submits that the Accused will suffer substantial prejudice, in relation to Paragraphs 5.1, 6.10, 6.18, 6.26, 6.27 of the Indictment, if the objectionable part of Witness GTD's testimony is not excluded from evidence. In its Reply, the Defence further states that the Prosecution's non-compliance with its disclosure obligations does not constitute a technical infringement of the Rules but a "substantial violation causing significant prejudice to the Accused".⁴

The Prosecution Response

8. The Prosecution submits that the Defence had every opportunity in court to object to Witness GTD's testimony that André Ntagerura distributed weapons and uniforms at a roadblock and to cross-examine the witness about these alleged events but failed to do so at the appropriate time.

9. The Prosecution further argues that the Defence, by its conduct, has waived its right to raise any objection on the evidence presented by Witness GTD and, therefore, is now estopped from doing so. In support of its argument, the Prosecution refers to the recent Judgement, *Eliézer Niyitegeka v. The Prosecutor*,⁵ in which the Appeals Chamber held that a party who fails to object to evidence presented by a witness is precluded from raising an objection thereafter.

10. The Prosecution also submits that the Motion fails to indicate any prejudice that the Accused will suffer by the "mere mention of the name André Ntagerura giving uniforms at a roadblock".⁶ The Prosecution asserts that, for the testimony of Witness

² Motion, para. 13. The French text reads, "C'est pourquoi la défense a été prise par surprise."

³ Motion, para. 13. The French text reads, "Le nom du ministre André Ntagerura n'est jamais mentionné dans les déclarations du témoin GTD."

⁴ Reply, para. 19. The French text reads, "[La] présente situation ne constitue pas une violation simplement technique du Règlement, mais une violation substantielle qui cause un préjudice important à l'accusé".

⁵ *Niyitegeka*, Judgement (AC), 29 July 2004, paras. 199, 200, 203, 206, and 208.

⁶ Response, para. 4

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GTD to qualify for exclusion, the Defence must clearly show any prejudice that the Accused will suffer, which has not been demonstrated in the present circumstance.

DELIBERATIONS

11. The Chamber has examined the arguments of the Defence for exclusion of a part of Witness GTD's testimony, on the basis of the Prosecution's failure to provide timely disclosure, pursuant to Rules 66 and 67 (D) of the Rules. However, a close review of the transcripts reveals that the Defence did not raise any objection to the admission of the testimony in the course of its being received.

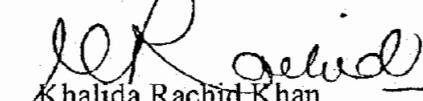
12. After careful consideration, the Chamber is not satisfied with the Defence explanation for its failure to object in a timely manner to GTD's testimony, nor is it satisfied that the Defence was not able to conduct an effective cross-examination of the witness.

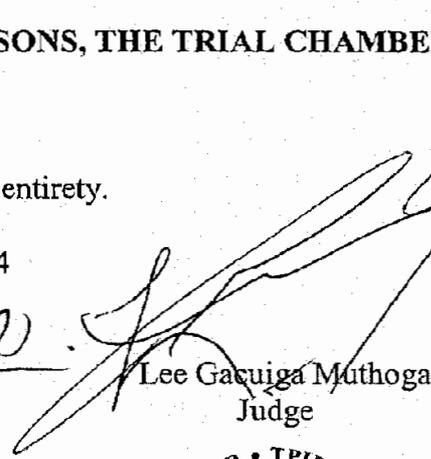
13. While the Chamber acknowledges that, in certain circumstances, objections to the evidence of a witness may be raised by Motion subsequent to the witness's testimony, such Motions, to be successful, should demonstrate that there was a satisfactory reason for failure to object timeously and that the accused has suffered prejudice because of the failure to give notice of the objectionable testimony. However, in the present case, the Chamber finds that the Defence has failed to demonstrate any prejudice suffered by the Accused sufficient to warrant the remedy requested.

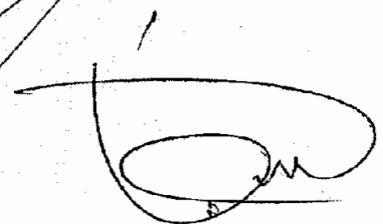
FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DENIES the Motion in its entirety.

Arusha, 30 November 2004


Khalida Rachid Khan
Presiding Judge


Lee Gacuija Muthoga
Judge


Emile Francis Short
Judge

