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ICTR-01-76-T  
08-07-2005  
(3426-3422)



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

3426  
S. Mushi

OR: ENG

TRIAL CHAMBER I

**Before:** Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Dennis C. M. Byron

**Registrar:** Adama Dieng

**Date:** 7 July 2005

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

2005 JUL -8 P 1:32  
S. Mushi  
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DECISION ON THE ADMISSION OF CERTAIN EXHIBITS  
Corrigendum

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## INTRODUCTION

1. The Prosecution and Defence made distinct requests on 11 November 2004 for the admission of certain documents into evidence related to the examination of witnesses called during that trial segment. The Chamber did not have an opportunity to dispose of those two outstanding requests at the time. In addition, during a status conference held on 29 March 2005, the Chamber reserved its decision on the admission of a number of disputed exhibits used during the testimony of the Accused.<sup>1</sup> The Defence also requested that Witness FMP1's diary be admitted into evidence. The Chamber now finds it expedient to deal with these outstanding evidentiary questions jointly in a single decision.

## DELIBERATIONS

### *Statement of Prosecution Witness YC*

2. During the proceedings on 11 November 2004, the Prosecution accepted the admission of several documents relating to Witness YC, but requested that the Chamber also admit his statement to Tribunal investigators of 12 October 2001, because the Defence referred to it in the witness's cross-examination on 27 October 2004. The Defence asserted that the mention of this statement during cross-examination was a mistake.

3. The Chamber has reviewed the transcripts of the relevant proceedings of the examination of Witness YC. During cross-examination, the Defence put several questions to the witness about whether various aspects of his testimony had been previously mentioned in his statement to Tribunal investigators. At the close of the witness's examination, the Chamber asked the Defence whether it wished to tender the statement as an exhibit. The Defence responded that it did not wish to do so because it had only inadvertently mentioned the statement out of haste when it intended to refer to another document.<sup>2</sup> The Prosecution never used the document during its examination. Under these circumstances, the Chamber does not find it necessary to admit the document to provide context.

### *Document Produced by Prosecution Witness ANX*

4. With respect to Witness ANX, the Prosecution, on 11 November 2004, requested the admission of two documents dated in January 2002 that were provided by the witness while he was still in Arusha but after the close of his testimony. The existence of the documents were mentioned by the witness during his examination on 5 November 2004. Consequently, the Chamber requested that the witness provide copies of them to the Registry for circulation to the

<sup>1</sup> At the status conference, which took place after the Accused's testimony, the Chamber sat pursuant to Rule 15 *bis*. Consequently, the Chamber admitted only those exhibits which were not disputed and heard argument on the rest, reserving its final decision after consideration by the full bench.

<sup>2</sup> T. 27 October 2004 p. 58 ("Mr. President: Do you want to start with an ICTR statement ... the one you referred to, I think, dated 12 October 2001, do you want that first, maybe? Mr. Alao: Mr. President, it is because I was doubtful in that regard, precisely, because it was not the one who was connected to the question of importance to us. We committed an error because we did all of this in a hurry. And the document that we should have referred to is this one. We did not attend to that statement taken by the investigators of the Tribunal.")

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parties. The Chamber indicated that the parties could seek recall of the witness, if necessary, in light of the documents. The Kinyarwanda documents were translated into French and both the original and French translations were filed and formally circulated then by the Registry to the parties on 9 November 2004.

5. Witness ANX referred to the existence of the January 2002 documents during his re-examination. Neither the Prosecution nor the Defence examined him on the basis of these documents. The Chamber asked him to produce them and gave the parties an opportunity to review the documents and to recall him. However, the Prosecution did not seek to tender them or to recall the witness until after the close of its case. Therefore, the Chamber denies the Prosecution request to admit these documents.

*Documents Used in Connection With Cross Examination of Prosecution Witness KEI*

6. At the status conference on 11 November 2004, the Defence raised an outstanding issue concerning its oral motion of 26 October 2004 to admit three written statements given by individuals other than witnesses used during the cross-examination of Witness KEI on that date. These documents include the statement of 3 October 2001 by Witness AMP, the statement of 11 December 2001 by Witness YD, and the handwritten pro-justitia statement of 5 March 1998 of Bernard Rutambika, dated 5 March 1998. The Defence sought to tender these statements as exhibits at the close of Witness KEI's cross-examination. The Prosecution objected based on Rule 92 *bis*. The Chamber deferred its ruling on this, pending the disposition of a motion on a similar issue.

7. The Chamber recalls that, on 3 November 2004, it admitted the written statement of Witness YA, who was not called to testify, and which was used during the cross-examination of Witness YF.<sup>3</sup> The Chamber reasoned that pursuant to Rule 89 (C), the statements of non-testifying individuals used during cross-examination may be admitted into evidence, even if they do not conform to the requirements of Rules 90 (A) and 92 *bis*. However, these statements, like a witness's own prior statements, do not constitute evidence that the contents thereof are truthful and are relevant only insofar as they are necessary to the Trial Chamber in its assessment of the credibility of the witness.<sup>4</sup> In light of this decision, the Chamber admits the statements of Witness AMP and Bernard Rutambika which the Defence used in connection with the cross-examination of Witness KEI on the same basis.

8. A review of the transcripts of Witness KEI's testimony reveals that the Defence did not examine the witness on the basis Witness YD's statement.

*Documents Used in Connection with Examination of Aloys Simba*

9. During the proceedings on 29 March 2005, the Defence sought to tender: two written statements of Witness BJK1, dated respectively 27 February and 17 April 2004; a pro justitia statement of Simon Bikindi dated 1 June 1994; a photocopy of Bikindi's passport; a letter from Marcel Gatsinzi, dated 6 October 2004; two statements of Witness SAG, dated respectively 22

<sup>3</sup> T. 3 November 2004 pp. 37-39.

<sup>4</sup> *Id.* at p. 38. See also *Akayesu*, Judgement (AC), paras. 134-135.

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July 2004 and 7 January 2005; and an excerpt of the Rwandan list of category 1 offenders.<sup>5</sup> The Prosecution objected to the admission of these exhibits. In addition, the Prosecution sought to tender a letter from Eugene Rutaganda to the Accused, dated 9 March 2000. The Defence stated that the document should be treated the same as its requests to admit statements mentioned above.

10. The Chamber has reviewed the transcript of the examination of the Accused. He identified many of the documents the Defence seeks to tender, but was not questioned on the basis of them. Thus, the Chamber does not require their admission to provide additional context for the Accused's examination.<sup>6</sup> In contrast, the Prosecution did cross-examine the Accused on the basis of the letter from Eugene Rutaganda.<sup>7</sup> Consequently, the document may be admitted on the same basis as those referred to above in paragraph 7.

*Defence Witness FMP1's Diary*

11. During the proceedings on 29 March 2005, the Defence requested the admission of a copy of Witness FMP1's diary into evidence. The Prosecution objected and stated that if the diary were to be admitted, further cross-examination should be permitted.

12. Witness FMP1 testified that she contemporaneously recorded the events of April 1994 into a diary that she produced during her examination on 21 February 2005 by video-link from The Hague. The witness made extensive reference to her diary, and it was also referred to by the Accused. The Chamber consequently will admit it into evidence. The Chamber will not, however, allow further cross-examination. A representative of the Prosecution was in The Hague during the examination primarily for these purposes. A copy of the diary was scanned and sent to Arusha. The original diary has been in the custody of the Registry since 10 March 2005 for the parties' review. Given the extensive reference to the document, the Prosecution should not have been surprised that the Defence would tender it into evidence.

13. The deadline for the submission of the final trial briefs was 22 June 2005. The parties may address the issues arising from the documents admitted through the present decision during the hearing of closing arguments scheduled on 7 and 8 July 2005.

**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Defence request to admit the statements of 3 October 2001 by Witness AMP and of 5 March 1998 by Bernard Rutambika as well as its request to admit Witness FMP1's diary; and the Prosecution request to admit the letter of Eugene Rutaganda, dated 9 March 2000;

**DENIES** the Defence request to admit the statement of 11 December 2001 by Witness YD and the Prosecution request to admit documents related to Witnesses YC and ANX; and the Defence request to admit the additional documents used in connection the examination of Aloys Simba;

<sup>5</sup> In addition, the Defence sought to tender the written statement of Prosecution Witness AMP, which is admitted *supra* in paragraph 6.

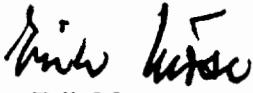
<sup>6</sup> T. 23 March 2005 pp. 15-16, 26-29, 40-41, 43-48.

<sup>7</sup> T. 24 March 2005 p. 46.

3422

**DIRECTS** the Registry to make a certified copy of FMP1's diary and to retain the original copy until the final disposition of this case.

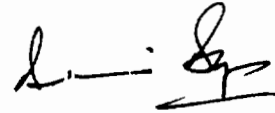
Arusha, 7 July 2005



Erik Møse  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Dennis C.M. Byron  
Judge

[Seal of the Tribunal]

