



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
10-10-2005
(20588 — 20585)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

20588 *mmk*

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 10 October 2005

The PROSECUTOR

v.

Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

2005 OCT 10 4:19:01
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**DECISION ON NZUWONEMEYE'S MOTION FOR RECONSIDERATION OF THE
CHAMBER'S ORAL DECISION OF 14 SEPTEMBER 2005 ON ADMISSIBILITY OF
WITNESS XXO'S TESTIMONY IN THE MILITARY I CASE IN EVIDENCE**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Alphonse Van
Ms Ifeoma Ojemeni Okali
Mr Segun Jegede
Mr Moussa Sefon
Mr Abubacarr Tambadou
Ms Faria Rekkas
Ms Anne Pauline Bodley

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for **Augustin Bizimungu**
Mr Christopher Black and Ms Tiphaine Dickson for **Augustin Ndindiliyimana**
Mr Charles Taku for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

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

SITTING as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

BEING SEISED OF the « Notice of Motion to Adduce and Tender Specific Paragraphs of Pages 30 to 31 of the Transcript in French and Pages 28 to 29 of the Transcript in English of the testimony of Prosecution Protected Witness XXO in the Military I Trial before Trial Chamber I on the 20th November 2003 and Page 21 of Transcript in French and Page 18 of Transcript in English of 21st November 2003 Pursuant to Rules 54, 89(C), 90(G)(ii), and 92*bis* (D) and (E) of the Rules of Procedure and Evidence », filed on 19 September 2005 (the “Motion”);

HAVING RECEIVED AND CONSIDERED the

- (i) « *Réponse du Procureur à la Requête formulée par le conseil de François-Xavier Nzuwonemeye, tendant à faire admettre en preuve certains extraits de la déposition faite par le témoin XXO dans le procès Militaire I* », filed on 22 September 2005 (the “Response”);

RECALLING its oral Decision of 14 September 2005 on the issue of admissibility of XXO’s testimony in the Military I case;

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”);

HEREBY DECIDES the Motion on the basis of the written briefs filed by the Parties pursuant to Rule 73(A) of the Rules.

SUBMISSIONS BY THE PARTIES

The Defence

1. The Defence for Nzuwonemeye urges the Chamber to reconsider its oral Decision of 14 September 2005 denying the Defence’s request to admit into evidence the transcripts of the testimony of Witness XXO in the Military I case.
2. The Defence for Nzuwonemeye submits that it brought the excerpts of XXO’s testimony to the attention of the Chamber on 14 September 2005 during the testimony of Prosecution Witness LN to counter Witness LN’s hearsay evidence concerning the circumstances of the death of Prime Minister Agathe Uwilingiyimana on the night of 6 to 7 April 1994.
3. The Defence further submits that a ruling on the Defence oral motion for the exclusion of Prosecution Witness LN’s hearsay testimony is still awaited.
4. The Defence argues that the first motivation of this application is to safeguard the rights of the Accused under Article 20(2) 4(e) of the Statute as well as the “supreme interest of Justice” and submits that his application is based on Rules 54, 89(C), 90(G)(ii), and 92*bis* (D) and (E) of the Rules.

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5. The Defence submits that the Chamber may grant the motion under Rule 54 for the purpose of the proper conduct of the trial. The Defence argues that it is its duty both under Rules 90(G)(ii), and 92bis (D) and (E) to bring to the attention of the Judges all material evidence of probative value and all competing and conflicting versions and theories of the commission of the alleged crimes so that the Trial Chamber can make an informed decision about the various allegations contained in the indictment.

6. The Defence further submits that, with respect to Rule 89(C), Witness XXO's testimony in the Military I case is relevant and has probative value in the present proceedings since XXO was among the guards at the premises of Prime Minister Agathe Uwilingiyimana on the night of 6 to 7 April 1994.

7. Finally, the Defence prays that, should the Chamber not grant the application, the Prosecutor be directed to facilitate access to protected Witness XXO to explore the possibility of calling him to testify.

The Prosecution

8. The Prosecution recalls that the Chamber had already decided the Defence oral Motion on 14 September 2005.

9. The Prosecution submits that this Chamber cannot admit evidence of allegations made in another case before a different Chamber.

10. Concerning the alternative prayer of the Defence, the Prosecution submits that it is not the Office of the Prosecutor that can authorize the Defence to contact the protected witness in question. Rather, this request has to be addressed to the Trial Chamber that had issued the protective measures and with the consent of the protected witness, with whom an interview is sought.

DELIBERATIONS

11. The Chamber takes note of the Defence's request to reconsider its oral Decision of 14 September 2005. The Chamber recalls its previous decision that in order for Motion for Reconsideration to succeed, the moving party has to demonstrate the discovery of a new fact, which, had it been known by the Chamber at the time, would not have allowed it to render the decision; or that there has been a material change in circumstances; or finally, that the previous decision was erroneous and therefore prejudicial to either party.¹

12. The Chamber recalls that on 14 September 2005 it denied the Defence's request to admit into evidence "at this point of the proceedings" the transcripts of Witness XXO's testimony in the Military I case.² The Chamber further ruled that the Defence was entitled to call Witness XXO as a Defence Witness to support its case.³

¹ *The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, Francois-Xavier Nzuwonemeye and Innocent Sagahutu*, ICTR-00-56-T, Trial Chamber II, "Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials" rendered on 3 November 2004, para. 21.

² T. 14 September 2005, p. 10, 15 (ICS).

³ T. 14 September 2005, p. 7 (ICS).



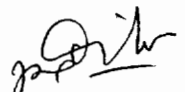
13. The Chamber considers that the Defence has not brought forward any new fact which would warrant the Chamber to reach a different decision now from that of 14 September. The Defence has also failed to demonstrate that a material change in circumstances has occurred, and no reason has been given why in the Defence's view the Chamber's decision of 14 September 2005 was erroneous. The Defence has therefore not satisfied the criteria necessary to enable the Chamber to exercise its discretion to reconsider a previous Decision.

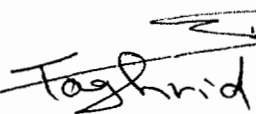
14. Concerning the alternative prayer, the Chamber recalls that the Defence's request to interview protected Witness XXO to explore the possibility of calling him to testify has to be addressed to the Trial Chamber that issued the protective measures, that is Trial Chamber I.

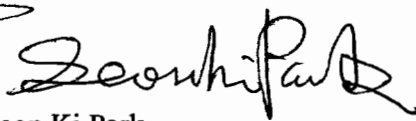
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion in all respects.

Arusha, 10 October 2005


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

