



UNITED NATIONS
NATIONS UNIES

ICTR-99-50-T
23-02-2006
(22769-22766)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

22769
R

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Mr Adama Dieng

Date: 23 February 2006

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**RECONSIDERATION OF ORAL RULING OF 1 JUNE 2005 ON EVIDENCE
RELATING TO THE CRASH OF THE PLANE CARRYING PRESIDENT
HABYARIMANA**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. George William Mugwanya
Mr. Shyamial Rajapaksa

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms Alexandra Marcil for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

22768

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

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, presiding, Judge Lee Gacuga Muthoga and Judge Emile Francis Short (the “Trial Chamber”);

BEING SEIZED of a Defence Oral Motion to reconsider the Oral Ruling of 1 June 2005;¹

RECALLING the oral submissions of the Parties made in court on 31 October 2005, on which the Chamber reserved a ruling;²

THE CHAMBER now reconsiders its Decision.

Background

1. The Chamber ruled that the issue as to who was responsible for the shooting down of the plane was not before it. Moreover, Dr. Des Forges had not discussed the matter in her book or in her expert report. Consequently, the Chamber ruled that the question put to Dr. Des Forges was irrelevant.³
2. The Defence for Justin Mugenzi, as well as the other Defence teams, requests the Chamber to review this Decision, and indicates that it may call a witness to present evidence regarding responsibility for the shooting down of the plane.⁴
3. Whilst opposing the Motion, the Prosecution accepted that it would be proper for the Chamber to reconsider the Oral Ruling of 1 June 2005, since this issue was likely to recur several times in the presentation of the Defence cases.

Submissions

4. Mr. Mugenzi argues that evidence regarding the matter is relevant. If it is shown that the Accused were not responsible for the downing of the President’s plane, this evidence would negate the Prosecution’s assertion that the Accused were involved in a plan to commit genocide, formulated prior to 6 April 1994, since the unfolding of the alleged plan would have been triggered by an event outside of their control.
5. The Defence for Mugiraneza adds that such evidence would have a bearing on the credibility of Prosecution witnesses who have testified about the commencement of the massacres.
6. The Defence for Bizimungu raises several points in support of the contention that evidence on the shooting down of the President’s plane is relevant: first, the evidence would have a bearing on the state of mind of the Government Ministers at the time; second, the evidence would show whether the government was in control of the situation in Rwanda; third, the evidence would demonstrate whether the Rwandan

¹ T. 31 October 2005, pp.33-35; referring to Oral Decision at T. 1 June 2005, p.21.

² T. 31 October 2005, pp. 33-40.

³ T. 1 June 2005, p.21.

⁴ T. 31 October 2005, p. 33; see also *Justin Mugenzi’s Notice of Matters to Be Raised at the Pre-Defence Conference to be Held on Thursday 27 October 2005, 25 October 2005.*

 2

state had disintegrated and whether the Rwandan government was in control of the military situation; and fourth, the evidence would indicate why roadblocks were established in Rwanda. Finally, it is important to hear this evidence because it shows that the shooting down of the plane is the event most responsible for exacerbating ethnic tension in Rwanda at the time.

7. The Prosecution's main submission is that the responsibility for the shooting down of the plane is irrelevant to the charges against the Accused. Whilst the downing of the plane may have been the "trigger" for the ensuing massacres, the conspiracy was independent of that event. To that extent, the Indictment does not charge the Accused with responsibility for the downing of the plane, and it does not seek to attribute responsibility for this incident to the Accused.

Deliberations

8. The Chamber has reviewed the jurisprudence of the Tribunal on this issue. Several cases have allowed limited questioning on the issue of responsibility for the shooting down of the President's plane. In the case of *Bagosora et al.*, Judge Williams presiding, Trial Chamber III ruled that although the responsibility for the shooting down of the plane fell outside of the mandate of the Tribunal, there may be some relevance to a line of questioning based on this event, provided that it does not extend into great detail.⁵ Later in the same case, Judge Mose presiding (following a change in the composition of the bench), the Chamber allowed the Defence to question Prosecution Witness General Romeo Dallaire on the shooting down of the plane.⁶ In the same case, Defence Witness Dr. Helmut Strizek also testified about this issue.⁷ In *Ntagerura et al.*, Trial Chamber III ruled that the report and testimony of a proposed expert witness dealing with the responsibility for the shooting down of the plane would not aid the Chamber in considering any issue clearly relevant to the trial.⁸ In the case of *Nyiramasuhuko et al.*, Trial Chamber II ruled, in response to an objection from the Prosecution on the relevance of the line of questioning relating to the shooting down of the plane, that the Defence could, during cross-examination of Prosecution witnesses, "put their case" to the witness "without unnecessary details".⁹ In line with that ruling, the same Chamber allowed, without objection, several questions on the assassination of the President to be addressed to Prosecution Expert Witness André Guichaoua.¹⁰ More recently, Trial Chamber III in *Karemera et al.* dealt with the issue by stating that the charges against the Accused are not based on any alleged responsibility of the Accused in the assassination of President Habyarimana. Furthermore, the Chamber stated that it could not relieve any of the government Ministers in that case of his alleged individual criminal responsibility for international crimes committed in Rwanda during 1994.¹¹

⁵ *Bagosora et al.*, T. 25 September 2002, pp.39-41.

⁶ For example *Bagosora et al.*, T. 22 January 2004, pp. 53-55; T. 27 January 2004, pp. 82-83.

⁷ For example *Bagosora et al.*, T. 12 May 2005, pp.32-33.

⁸ *Ntagerura et al.*, T. 4 July 2002, pp. 7-8.

⁹ *Nyiramasuhuko et al.*, T. 15 June 2004, pp.57-58.

¹⁰ For example *Nyiramasuhuko et al.*, T. 5 October 2004, pp.37-40.

¹¹ *Karemera et al.*, Décision Relative a la Requête de Joseph Nzirorera aux Fins d'Obtenir la Coopération du Gouvernement Français, 23 February 2005, para. 11; Decision on Joseph Nzirorera's Application for Certification to Appeal the Decision Denying his Request for Cooperation to Government of France, 31 March 2005, para. 6; Decision on Joseph Nzirorera's Motion to Compel Inspection and Disclosure, 5 July 2005, para. 12.

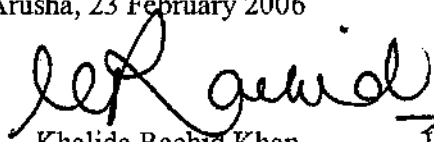
12766

9. In the Chamber's view, the charges in the Indictment are not based upon any alleged responsibility or involvement of the Accused in the shooting down of the President's plane. The Chamber notes the Prosecution's submissions that "[...] we can admit as Prosecutors that we are not charging and we are not holding and we are not alleging that the accused persons have anything to do with the shooting down of the plane".
10. The potential involvement or responsibility of the RPF or other forces not associated with the government of Rwanda cannot relieve the Accused of responsibility for the crimes they have been charged with. The Chamber is of the opinion that evidence as to who is responsible for the crash of the President's plane would not assist the Chamber in its decision as to the guilt or innocence of the Accused.
11. Nonetheless, the Chamber reiterates that the Defence is entitled to put its case in whatever way it deems to be most appropriate, providing that the evidence is relevant to the charges against the Accused. The jurisprudence of the Tribunal shows that questions relating to the responsibility for the shooting down of the plane may be put to a witness provided that this line of questioning does not go into great detail.

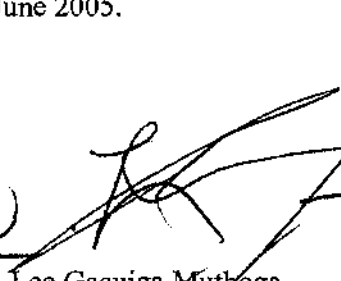
THEREFORE THE CHAMBER

DENIES the Motion for Reconsideration; and
AFFIRMS its Oral Decision of 1 June 2005.

Arusha, 23 February 2006



Khalida Rachid Khan
Presiding Judge



Lee Gacuiga Muthoga
Judge



Emile Francis Short
Judge

[Seal of the Tribunal]

