

ICTR - 00-56-T
27 - 02 - 2006
(22023 - 22020)

22023



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 27 February 2006

The PROSECUTOR

v.

Augustin BIZIMUNGU
Augustin NDINDILIYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

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**DECISION ON BIZIMUNGU'S MOTION FOR CERTIFICATION TO APPEAL THE
CHAMBER'S ORAL DECISION OF 2 FEBRUARY 2006 ADMITTING PART OF
WITNESS GFA'S CONFESSONAL STATEMENT INTO EVIDENCE**

Office of the Prosecutor:

Mr Cissé Aly Bâ
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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 for Augustin Ndingiliyimana
Mr Charles Taku and Mr Hamuli Rety for François-Xavier Nzuwonemeye
Mr Fabien Segatwa and Mr Seydou Deumbia for Innocent Sagahutu

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 Bizimungu's « *Requête de la Défense du Général Bizimungu aux fins d'obtenir l'autorisation de la Chambre de première instance II d'interjeter appel contre sa décision orale du 2 février 2006 d'admettre la pièce ID-19 (Article 73(B) du Règlement de procédure et preuve)* »¹ filed on 8 February 2006 (the "Motion");

HAVING RECEIVED AND CONSIDERED the

- (i) « *Observations du Procureur sur la Requête de la Défense d'Augustin Bizimungu aux fins d'obtenir l'autorisation de la Chambre de première instance II d'interjeter appel contre sa décision orale du 2 février 2006* »,² filed on 9 February 2006 (the "Response");

RECALLING the Chamber's Oral Decision rendered on 2 February 2006 (the "Impugned Decision");

CONSIDERING the Statute of the Tribunal (the "Statute"), and the Rules of Procedure and Evidence (the "Rules"), in particular Rule 73(B) of the Rules;

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

SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence requests for certification to appeal the Impugned Decision pursuant to Rule 73(B).
2. The Defence submits that the Impugned Decision raises a question that significantly affects the fairness and the outcome of the proceedings.
3. The Defence submits that ID-19 introduces a new element to the proceedings with no relevance whatsoever. The Defence further submits that there is no legal ground to admit a document into evidence only on the basis that it has been shown to a witness during his testimony.
4. The Defence submits that it opposed the admissibility of the said document during the proceedings on 2 February, arguing that a) the document was never translated into one of the two working languages of the Tribunal, b) the Defence for Bizimungu is not aware of the

¹ "Motion of the Defence for General Bizimungu Requesting Certification to Appeal the Chamber's Oral Decision of 2 February 2006 to Admit Exhibit ID-19 into Evidence (Pursuant to Rule 73(B) of the Rules of Procedure and Evidence)" (Unofficial Translation).

² "The Prosecution's Observations Regarding the Motion of the Defence for General Bizimungu Requesting Certification to Appeal the Chamber's Oral Decision of 2 February 2006 to Admit Exhibit ID-19 into Evidence" (Unofficial Translation).



document's content and c) the document was not part of either the examination-in-chief or the cross-examination.

5. The Defence argues that it is therefore difficult to assess whether or not ID-19 contains any incriminating elements and whether or not the document is linked to any of the subjects touched upon by the witness' testimony.

6. The Defence submits that admitting into evidence a document to which a witness made reference during his testimony deprives the Accused of his fundamental right to a full defence, causing "irreparable prejudice."³

7. Finally, the Defence submits that the resolution of this issue by the Appeals Chamber would advance the proceedings and have an impact on the arguments taking place before the Chamber. Furthermore, a decision by the Appeals Chamber would contribute to judicial economy, since it would not be necessary for the Trial Chamber to entertain any further arguments concerning the admissibility of similar documents.

The Prosecution

8. The Prosecution submits that admitting into evidence a document emanating from the witness and to which both the Prosecution and the Defence made reference does not affect the fairness or the progress or the outcome of the proceedings.

9. The Prosecution submits that pursuant to Rules 89(C) and 98 of the Rules, the Trial Chamber has discretion on this issue and that the Chamber has not abused its discretion in the instant case.

10. The Prosecution therefore prays the Chamber to deny the Defence request for certification.

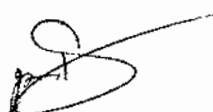
DELIBERATIONS

11. The Chamber recalls its previous Decisions in which it discussed the criteria for certification under Rule 73(B).⁴ In particular, the Chamber notes the principle that decisions under Rule 73 (A) are "without interlocutory appeal" and that certification to appeal is an exception that the Chamber may grant, if the two criteria under Rule 73(B) are satisfied.

12. The first part of the test is satisfied "if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial". The Chamber agrees with the Defence that admitting documents with an unknown and possibly incriminating content into evidence may affect the fairness of the proceedings and the outcome of the trial. The Chamber, however, recalls that the document in question, a list of names drawn up by Witness GFA as part of one of his confessional statements made to the Rwandan authorities, was admitted into evidence on 2 February 2006 strictly for

³ Motion, para. 10.

⁴ *The Prosecutor v. Augustin Bizimungu, Augustin Ndingiyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu*, ICTR-00-56-T, "Decision on Sagahutu's Request for Certification to Appeal" (TC), 9 June 2005, para. 16, 17; "Decision on Bizimungu's Request for Certification to Appeal the Oral Decision Dated 8 June 2005" (TC), 30 June 2005; "Decision on Ndingiyimana's Request for Certification to Appeal the Chamber's Decision Dated 21 September 2005" (TC), 26 October 2005, para. 7.



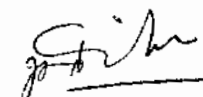
identification purposes.⁵ Furthermore, the Chamber notes that the document was part of the material disclosed by the Prosecution, and that the Defence admitted during Witness GFA's testimony that it was in possession of the document.⁶ Finally, the Chamber notes that reference was made to that document during cross-examination by the Defence on at least one occasion.⁷ In light of the above, the Chamber finds the Defence submission that "irreparable prejudice" was caused by the Chamber's Oral Decision of 2 February 2006 to be grossly inaccurate and without merit. The Defence has therefore failed to meet the first criterion for certification.

13. Having determined that the first part of the two-pronged test under Rule 73(B) has not been satisfied, the Chamber need not consider the second part.

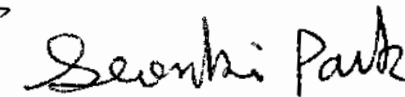
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the request for certification.

Arusha, 27 February 2006


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]

⁵ T 2 February 2006, p. 51, 52 (French version). By admitting a document as ID evidence, the Chamber acknowledges the existence of the document, but not its content.

⁶ T 31 January 2006, p. 86, 87 (French version).

⁷ T 31 January 2006, p. 87 (French version).

