



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-01-71-A  
04 April 2006  
(522/H - 519/H)

IN THE APPEALS CHAMBER

Before: Judge Wolfgang Schomburg, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 4 April 2006

ICTR Appeals Chamber

Date: 04 April 2006

Action: R.J.

Copied To: See Proof of Service

EMMANUEL NDINDABAHIZI

v.

THE PROSECUTOR

Case No. ICTR-01-71-A

DECISION ON THE ADMISSION OF ADDITIONAL EVIDENCE

Counsel for the Prosecution

Mr. James Stewart  
Mr. George Mugwanya  
Mr. Abdoulaye Seye

Counsel for the Defence

Mr. Michel Konitz  
Ms. Magali Pirard

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
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NAME / NOM: KOFFI KWAMELO A. AFANDE	
SIGNATURE: [Signature]	DATE: 05 April 2006

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 (“Appeals Chamber” and “International Tribunal”, respectively),

**BEING SEIZED** of the “Deuxième Requête de l’Appelant en Présentation de Moyens de Preuve Supplémentaires - Article 115 du Règlement” filed confidentially on 28 February 2006 (“Motion”), in which counsel for Emmanuel Ndingabizi (“Defence” and “Appellant”, respectively) seeks to introduce evidence given by Mr. Fidèle Uwizeye on 14 April 2005 in the case of *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, as additional evidence on appeal pursuant to Rule 115 of the Rules of Procedure and Evidence (“Rules”);

**NOTING** the “Prosecutor’s Response to ‘Deuxième Requête de l’Appelant en Présentation de Moyens de Preuve Supplémentaires - Art. 115 du Règlement’” filed on 10 March 2006 (“Response”), in which the Prosecution requests that the Motion be dismissed in its entirety;

**NOTING** the “Réponse aux observations de l’intimé sur la deuxième requête de l’appelant en présentation de moyens de preuve supplémentaires - Article 115 du Règlement” filed by the Appellant confidentially on 20 March 2006 (“Reply”);

**NOTING** that the confidential filing of the Motion and Reply does not serve the interests of justice and that the Defence orally confirmed that it does not object to the lifting of the confidentiality;

**NOTING** that according to paragraph 12 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal a reply may be filed within four days of the filing of the response;

**NOTING** that the Reply was filed untimely;

**CONSIDERING** that pursuant to Rule 115 of the Rules, an application for the admission of additional evidence on appeal shall be “filed with the Registrar not later than seventy-five days from the date of the judgement, unless good cause is shown for further delay”;

**CONSIDERING** that the Defence filed the Motion far outside the time frame set out in Rule 115 of the Rules;

**CONSIDERING** that the good cause requirement obliges the moving party to show that it was not able to comply with the time limit set out in the Rule, and that it filed the motion as soon as possible after it became aware of the existence of the evidence sought to be admitted;<sup>1</sup>

**CONSIDERING** the reasons advanced by the Prosecution on the issue of good cause, in particular

- that the Appellant was in possession of the transcripts for nearly 10 months before he filed the Motion;<sup>2</sup>
- that the Appellant had already indicated in his appeal brief that he was going to “request that the trial record of this testimony be produced” and that he would “file a motion for the same witness to testify in the instant case”;<sup>3</sup> and
- that the Pre-Appeal Judge, during the third status conference of 8 February 2006, advised the Appellant to pay particular attention to the admissibility criteria under Rule 115, should he seek admission of the transcripts under Rule 115;<sup>4</sup>

**FINDING** that the Appellant has failed to address the issue of good cause and that consequently good cause has not been shown;

**THEREFORE**

**LIFTS** the confidentiality of Motion and Reply; and

**DISMISSES** the Motion.

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<sup>1</sup> *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-A, Decision on Prosecution’s Motion to admit additional evidence in relation to Dario Kordić and Mario Čerkez, 17 December 2004, p. 2.

<sup>2</sup> Response, para. 6.

<sup>3</sup> Response, para. 7, referring to para. 318 of the Appellant Brief of 9 May 2005.

<sup>4</sup> Response, para. 10, referring to T. 8 February 2006, p. 7.

Done in both English and French, the English text being authoritative.

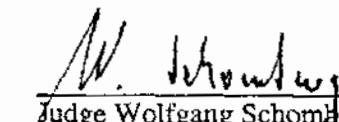
Dated this 4th day of April 2006,

At The Hague,

The Netherlands



[Seal of the International Tribunal]

  
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Judge Wolfgang Schomburg  
Presiding