



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

218/H

ICTR-00-55A-AR73(C)

29 May 2006

(218/H - 215/H)

*P.T.*

**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:

29 May 2006

2006 MAY 30 9:19 AM  
ICTR  
REGISTRY

**Tharcisse MUVUNYI**

v.

**THE PROSECUTOR**

Case No. ICTR-00-55A-AR73(C)

**ICTR Appeals Chamber**  
Date: 29 May 2006  
Action: P.T.  
Copied To: Concerned Judges

*Justice, SLD, LG, ALDs, L.*  
*Mafar*

**Decision on Interlocutory Appeal**

**Office of the Prosecutor:**

- Mr. Hassan Bubacar Jallow
- Mr. James Stewart
- Mr. Charles Adeogun-Phillips
- Ms. Adesola Adeboyejo
- Ms. Renifa Madenga
- Mr. Alfred Orono Orono
- Ms. Memory Maposa

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: CHARLES ZAMA

SIGNATURE: *Mafar* DATE: 29/05/2006

**Counsel for the Defence:**

- Mr. William E. Taylor
- Ms. Cynthia J. Cline

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1. 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 Serious Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of an interlocutory appeal filed by Tharcisse Muvunyi<sup>1</sup> against a Trial Chamber decision, allowing the parties to present expert testimony at the close of the case with respect to the authenticity of three disputed documents.<sup>2</sup> The Prosecution responded to the appeal on 22 May 2006,<sup>3</sup> and Mr. Muvunyi filed his reply on 25 May 2006.<sup>4</sup> The Appeals Chamber is also seized of Mr. Muvunyi's separate motion to stay the trial proceedings pending the disposition of this appeal.<sup>5</sup>

### Background

2. This appeal concerns the Prosecution's efforts to authenticate copies of three documents, allegedly identifying Mr. Muvunyi as *Commandant de la place* of Butare and Gikongoro prefectures.<sup>6</sup> The parties dispute whether Mr. Muvunyi held the position of area commander for the two prefectures, and the Trial Chamber characterized this issue as relevant to the indictment and important to the Prosecution's case.<sup>7</sup> The Prosecution first moved to tender these documents during the cross-examination of the first defence witness, Augustine Ndingiyimana.<sup>8</sup> The Trial Chamber refused to admit them into evidence at that time because, in its view, the Prosecution had failed to establish their *prima facie* reliability.<sup>9</sup> The Trial Chamber admitted the documents for identification

<sup>1</sup> *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-AR73(C), Muvunyi's Interlocutory Appeal, Pursuant to Rule 73(C) Pursuant to the Trial Chamber's Oral Decision of May 8, 2006 and Written Reasons for the Oral Decision of May 12, 2006, filed 15 May 2006 ("Muvunyi Appeal").

<sup>2</sup> *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on the Prosecutor's Motion Pursuant to Trial Chamber's Directives of 7 December 2005 for the Verification of the Authenticity of Evidence Obtained out of Court Pursuant to Rules 89 (C) and (D), 26 April 2006 ("Impugned Decision"). The Trial Chamber certified the appeal in an oral decision dated 8 May 2006 and issued its written reasons in *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Reasons for the Oral Decision on Muvunyi's Motion for Certification to Appeal the Chamber's Decision of 26 April 2006, 12 May 2006 ("Certification Decision").

<sup>3</sup> *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-AR73(C), Prosecutor's Response to "Muvunyi's Interlocutory Appeal, Pursuant to Rule 73(C) Pursuant to the Trial Chamber's Oral Decision of May 8, 2006 and Written Reasons for the Oral Decision of May 12, 2006", filed 22 May 2006 ("Prosecutor's Response").

<sup>4</sup> *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-AR73(C), Muvunyi's Reply to the Prosecutor's Response to Muvunyi's Interlocutory Appeal, filed 25 May 2006 ("Muvunyi Reply").

<sup>5</sup> *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-AR73(C), Emergency Motion to Stay the Trial Chamber Proceedings Pending the Outcome of Muvunyi's Interlocutory Appeal, Pursuant to Rule 73(C) Pursuant to the Trial Chamber's Oral Decision of May 8, 2006 and Written Reasons for the Oral Decision of May 12, 2006, filed 15 May 2006 ("Muvunyi Emergency Motion"). The Prosecution responded in *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-2000-55A-AR73(C), Prosecutor's Response to the "Emergency Motion to Stay the Trial Chamber Proceedings Pending the Outcome of Muvunyi's Interlocutory Appeal, Pursuant to Rule 73(C) Pursuant to the Trial Chamber's Oral Decision of May 8, 2006 and Written Reasons for the Oral Decision of May 12, 2006", filed on 18 May 2006 ("Prosecution Response to Muvunyi Emergency Motion"). Mr. Muvunyi replied on 22 May 2006

<sup>6</sup> Certification Decision, paras. 6-9; Muvunyi Appeal, para. 2.

<sup>7</sup> Certification Decision, para. 8; Impugned Decision, para. 20.

<sup>8</sup> Impugned Decision, para. 1; Muvunyi Appeal, paras. 6-9.

<sup>9</sup> Impugned Decision, para. 1.

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purposes only and directed that the Prosecution could call witnesses to authenticate the documents at a later stage.<sup>10</sup>

3. In the Impugned Decision, the Trial Chamber granted the Prosecution's request to call a handwriting expert to authenticate the documents, and heard the witness on 8 May 2006.<sup>11</sup> The Impugned Decision also authorized Mr. Muvunyi to call evidence to contradict or otherwise challenge the evidence of the Prosecution's handwriting expert.<sup>12</sup> The Defence elected to call its own handwriting expert, who is expected to testify on 5 June 2006.<sup>13</sup> The parties' final written and oral submissions in the case are anticipated in June 2006.<sup>14</sup>

4. On appeal, Mr. Muvunyi principally argues that the Trial Chamber abused its discretion in allowing the Prosecution to "reopen" its case at the close of the trial and to present additional incriminating evidence which could have been presented earlier through the exercise of due diligence.<sup>15</sup> The Prosecution concedes that the expert evidence and the disputed documents could, and perhaps should, have been presented during its case in chief in support of its proof that Mr. Muvunyi was the area commander, but nonetheless contends that its admission at this stage is well within the Trial Chamber's discretion and authority.<sup>16</sup>

#### Discussion

5. The decision to admit or exclude evidence pursuant to Rule 89(C) of the Rules of Procedure and Evidence of the Tribunal ("Rules") as well as decisions related to the general conduct of the proceedings are matters within the discretion of the Trial Chamber.<sup>17</sup> A Trial Chamber's exercise of discretion will be reversed if the challenged decision was based on an incorrect interpretation of governing law, was based on a patently incorrect conclusion of fact, or was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.<sup>18</sup>

6. In the view of the Appeals Chamber, Mr. Muvunyi has identified no discernible error on the part of the Trial Chamber in allowing the parties to call evidence concerning the authenticity of the

<sup>10</sup> Impugned Decision, para. 1.

<sup>11</sup> Impugned Decision, para. 21; Muvunyi Emergency Motion, para. 4.

<sup>12</sup> Impugned Decision para. 21.

<sup>13</sup> Muvunyi Appeal, para. 2; Prosecution Response to Muvunyi Emergency Motion, para. 6.

<sup>14</sup> Muvunyi Emergency Motion, para. 4.

<sup>15</sup> Muvunyi Appeal, paras. 13-21; Muvunyi Reply, paras. 7-23.

<sup>16</sup> Prosecution Response, paras. 3, 9, 12-26.

<sup>17</sup> *The Prosecutor v. Théoneste Bagosora et al.*, Case Nos. ICTR-98-41-AR93; ICTR-98-41-AR93.2, Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence, 19 December 2003, para. 11 ("*Bagosora Decision*"). See also *Pauline Nyiramasukoko v. The Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasukoko's Appeal on the Admissibility of Evidence, 4 October 2004, para. 5 ("*Nyiramasukoko Decision*"); *Slobodan Milošević v. The Prosecutor*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004, para. 9 ("*Milošević Decision*").

<sup>18</sup> *Milošević Decision*, para. 10; *Bagosora Decision*, para. 11.

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three disputed documents. The Appeals Chamber notes that the Prosecution cross-examined Mr. Ndindiliyimana on the basis of the documents. At the time, Mr. Muvunyi raised an issue concerning the reliability of the documents, and the Trial Chamber authorized the Prosecution to call additional evidence to verify their authenticity.<sup>19</sup> Rule 89(D) of the Rules provides the Trial Chamber with clear authority to do so. In determining the timing of the testimony related to the authenticity of the documents, the Trial Chamber expressly considered the late stage of the proceedings and sought to avoid any possible prejudice to Mr. Muvunyi by allowing him to call evidence to contradict or otherwise challenge the evidence of the Prosecution's handwriting expert.<sup>20</sup> Mr. Muvunyi has pointed to no specific prejudice arising from this proposed procedure beyond an assertion of general unfairness.<sup>21</sup> In these circumstances, the Appeals Chamber cannot find that the Trial Chamber abused its discretion in allowing the Prosecution to present evidence concerning the authenticity of the documents.

7. Mr. Muvunyi's arguments focus on the possible admission of the three disputed documents. The Appeals Chamber observes that, at this stage, it is not clear if the three disputed documents will be admitted and, if so, what probative value, if at all, the Trial Chamber will give them in the context of its final assessment of the record.<sup>22</sup>

#### Disposition

8. For the foregoing reasons, the Appeals Chamber **DISMISSES** Mr. Muvunyi's appeal and **DISMISSES** as moot his request to stay the trial proceedings.

Done in English and French, the English version being authoritative.

Done this 29th day of May 2006,  
At The Hague,  
The Netherlands.



*W. Schomburg*  
Judge Wolfgang Schomburg  
Presiding

[Seal of the Tribunal]

<sup>19</sup> Impugned Decision, para. 1.

<sup>20</sup> Impugned Decision, paras. 18, 21.

<sup>21</sup> Muvunyi Appeal, para. 16(a).

<sup>22</sup> *Nyiramasuhuko* Decision, paras. 7, 8 ("[A] distinction must be drawn between, on the one hand, admissibility of evidence, and, on the other, the exact probative weight to be attached to it [ ... ]. [T]he admission into evidence does not in any way constitute a binding determination as to the authenticity or trustworthiness of the documents sought to be admitted. These are to be assessed by the Trial Chamber at a later stage in the case when assessing the probative weight to be attached to the evidence.")