



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 Flavia Lattanzi
Judge Florence Rita Arrey

Registrar: Mr Adama Dieng

Date: 05 June 2006

ICTR-00-55A-T
05-06-2006
(3461-3459)

THE PROSECUTOR

v.

THARCISSE MUVUNYI

ICTR-2000-55A-T

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ICTR
RECORDING UNIT

DECISION ON MUVUNYI'S MOTION TO INCLUDE ALL TESTIMONY OF
WITNESS AOG/D/X/006 IN THE APPELLATE RECORD

Office of the Prosecutor

Mr Charles Adeogun-Phillips, Senior Trial Attorney
Ms Adesola Adeboyejo, Trial Attorney
Ms Renifa Madenga, Trial Attorney
Ms Memory Maposa, Assistant Trial Attorney
Mr Dennis Mabura, Case Manager

Counsel for the Defence

Mr William E. Taylor, Lead Counsel
Ms Cynthia Cline, Legal Assistant

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal").

SITTING as Trial Chamber II composed of Judge Asoka de Silva, Presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey (the "Chamber");

NOTING that Judge Florence Rita Arrey, who is currently away from the seat of the Tribunal, has had the opportunity to read this Decision in draft, agrees with it, and has authorised the Presiding Judge to sign it on her behalf;

BEING SEIZED of "Muvunyi's Motion to Include all Testimony of Witness AOG/D/X/006 in the Appellate Record", filed on 18 April 2006 (the "Motion");

HAVING RECEIVED the "Prosecutor's Response to Accused Muvunyi's Motion to Include all Testimony of Witness AOG/X/006 in the Appellate Record", filed on 20 April 2006 (the "Response");

RECALLING the Chamber's "Decision on Accused's Motion to Expand and Vary the Witness List", filed on 28 March 2006 (the "Decision of 28 March 2006");

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

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

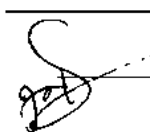
SUBMISSIONS OF THE PARTIES

The Defence

1. The Defence seeks to include in the appellate record of this case all documents utilized by the Chamber to render its Decision of 28 March 2006. It adds that it specifically seeks to include as part of the appellate record the testimony of the Witness variously known as X, D, AOG and 006 in its totality in all proceedings that the Court reviewed. It further requests that these documents be sealed and form part of the record in this case for the purpose of appeal.

The Prosecution

2. The Prosecution submits that the Decision of 28 March 2006 renders the present Motion *res judicata*. The Prosecution further argues that if the Defence was dissatisfied with the Decision of 28 March 2006 it should have requested certification to file an interlocutory appeal in the time frame stipulated in Rule 73(C) of the Rules. It adds that having failed to make such an application within the time frame required by the Rules, the Defence now seeks to enter the materials into the record through the back door.
3. The Prosecution further submits that the rules governing admissibility of evidence are clear. It adds that the Chamber, before reaching its Decision of 28 March 2006, had taken the proper steps under the law to safeguard the rights and interests of the Accused and cannot be said to have erred in its decision to exclude the testimony of the Witness as it



took the extra step of reviewing the transcripts of the most recent testimony of Witness AOG/006 in the *Ndindiliyimana* case.

4. Finally, the Prosecution submits that should the materials be admitted as part of the record without availing the Prosecution a right to challenge the content of the transcripts and of the testimony of the witness, such admission would amount to a violation of the Prosecutor's rights and would require the Chamber to review its Decision of 28 March 2006.

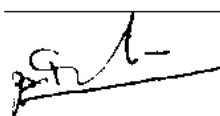
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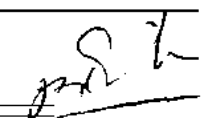
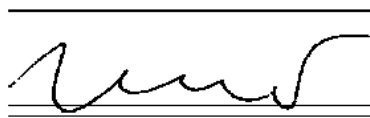
5. The Chamber notes that the Defence seeks to include all the evidence given by Witness X/D/AOG/006 in other proceedings before the Tribunal in the appellate record of this case. The Chamber recalls Article 20(3) of the Statute which guarantees the right of the Accused to be presumed innocent until proven guilty. This presumption subsists throughout the trial. It follows therefore that the issue of an appeal or the compilation of an appellate record does not arise until the trial comes to an end and until an appeal, if any, is filed. If the Chamber were to make the Order sought by the Defence, it would be prematurely anticipating the outcome of the trial in violation of the presumption of innocence. Therefore, the Chamber considers that the Defence request is premature.
6. Having decided that the Defence request is premature, the Chamber need not say more about the substance of the Motion. However, the Chamber would like to remind the Defence that the appropriate procedure to vary witness protection orders is to bring a motion before the Chamber that issued the protective order(s) pursuant to Rule 75 (F) and (G). An application to the current Chamber would only lie where the first Chamber is no longer seized of the matter.

FOR THE FOREGOING REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 05 June 2006


Asoka de Silva
Presiding Judge


Flavia Lattanzi
Judge
Florence R. Arrey
Judge

[Seal of the Tribunal]

