



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
20-10-2006
(23283-23280)

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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: 20 October 2006

The PROSECUTOR
v.
Augustin BIZIMUNGU
Augustin NDINDILYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

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H. M. M. M. M.

**DECISION ON NZUWONEMEYE'S MOTION TO EXCLUDE THE EXHIBITS
TENDERED THROUGH ALISON DES FORGES' TESTIMONY AND RELATED TO
JEAN KAMBANDA**

Office of the Prosecutor:

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Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for Augustin Bizimungu
Mr Christopher Black and Mr Patrick De Wolf for Augustin Ndindiliyimana
Mr Charles Taku and Mr Hamuli Rety for François-Xavier Nzuwonemeye
Mr Fabien Segatwa and Mr Seydou Doumbia 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 "Nzuwonemeye's Motion to Exclude the Exhibits Tendered through Alison Des Forges' Testimony and Related to Jean Kambanda", filed on 4 October 2006;

HAVING RECEIVED AND CONSIDERED the "Prosecutor's Response to Nzuwonemeye's Motion to Exclude the Exhibits Tendered through Alison Des Forges' Testimony and Related to Jean Kambanda", filed on 9 October 2006;

RECALLING its Oral Decision of 21 September 2006 admitting into evidence Exhibits P117A and P117B (the "Oral Decision of 21 September 2006")

CONSIDERING the Statute of the Tribunal (the "Statute"), and the Rules of Procedure and Evidence (the "Rules"), in particular Rule 89 (C) 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.

INTRODUCTION

1. On 21 September 2006, in the course of the examination-in-chief of expert witness Alison Des Forges, the Prosecution sought to tender two documents respectively entitled "*Les circonstances entourant mon arrestation le 18 juillet 1997 à Nairobi au Kenya, ma détention en Tanzanie, mon transfert aux Pays-Bas et mon procès en appel*", and "*Éléments de défense de Jean Kambanda, Le Procureur c/ Jean Kambanda, No. ICTR-97-23-DP*". The were said to have been tendered as Exhibits during appellate proceedings in the case of *Jean Kambanda v. The Prosecutor*. The Defence objected to the admission of the documents as exhibits on the ground that the documents were never admitted in the *Kambanda* proceedings and urged the Chamber to reserve its ruling until it could establish as a matter of certainty whether or not these documents were so admitted. Having considered the oral submissions of the Parties, the Chamber ruled that the documents were admissible and marked them as Exhibits P117A and 117B respectively.

SUBMISSIONS

2. The Defence requests the Chamber to reconsider its Oral Decision of 21 September 2006 on the ground that it has received confirmation from the ICTR Registry that exhibits P117A and P117B were never admitted in the *Kambanda* proceedings; that there are serious questions about the provenance and authenticity of the said documents; and that admitting them as exhibits would violate the right to a fair trial guaranteed under the Statute.

3. In its Response, the Prosecution submits that the issues raised are *res judicata* because they were all ventilated during the Defence's oral submissions on 21 September 2006, and were considered by the Chamber which nonetheless proceeded to admit the documents as exhibits.

4. In the alternative, the Prosecution submits that the said documents were properly admitted pursuant to the Chamber's broad discretion under Rule 89 (C) and that the only



requirement for admissibility of evidence under that sub-rule, is that the evidence must be relevant. The Prosecution further argues that the said documents are relevant to the present trial because they constitute part of the sources that Prosecution expert witness Alison des Forges relied upon to form her opinion. Furthermore, the Prosecution submits that matters of authenticity go to the weight to be attached to the documents, rather than to the Chamber's consideration relating to admissibility.

DELIBERATIONS

5. The Chamber notes that most of the arguments raised by the Defence Motion were already heard by the Chamber during oral hearings on 21 September 2006. Having heard those arguments and ruled that the documents were admissible as exhibits, the Defence cannot reopen those issues except where it can demonstrate that good cause exists for the Chamber to reconsider its prior decision.

6. The jurisprudence recognizes that a Trial Chamber may reconsider and modify its prior decision if it is persuaded that the decision was made in error because a new fact has come to light, which, if it had been known to the Chamber, would have led to a different outcome; that there has been a material change in circumstances; or that the decision could occasion a miscarriage of justice.¹

7. The Chamber considers that the only ground raised by the Motion for reconsideration is that exhibits P117A and P117B were not admitted in the *Kambanda* proceedings. This implies that the Defence relies upon a presumed lack of authenticity of exhibits P117A and P117B to challenge their admissibility. The Chamber notes that the authenticity of evidence, while important in the Chamber's assessment of weight at the end of the trial, is not a criterion for admissibility.²

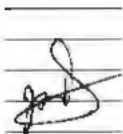
8. Furthermore, the Chamber recalls the provisions of Rule 89 (C) which give the Chamber discretion to admit any relevant evidence which it deems to have probative value. Based on the plain language of that sub-rule, there is no other requirement for admissibility of evidence before the Tribunal.

9. The Chamber notes that exhibits P117A and P117B are part of a large number of documentary sources that informed the opinion and testimony of Prosecution expert Witness Alison Des Forges. As such, the documents are relevant to the trial even if only for the limited purpose of evaluating her testimony and determining what weight to attach to it at the end of the trial.

10. The Chamber therefore concludes that the criteria for reconsideration have not been satisfied.

¹ *The Prosecutor v. Tharcisse Muvunyi*, "Decision on Muvunyi's Motion to Exclude Prosecution Exhibit P33", 13 June 2006, para. 11; *The Prosecutor v. Tharcisse Muvunyi*, "Decision on Motion to Strike or Exclude Portions of Prosecutor's Exhibit No. 34, alternatively Defence Objections to Prosecutor's Exhibit No. 34", 30 May 2006, para. 8; *The Prosecutor v. Ndindiliyimana et al.*, "Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials", 3 November 2004, para. 21.

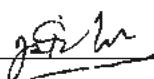
² *The Prosecutor v. Blaskic*, "Decision on the Defence Motion for Reconsideration of the Ruling to Exclude from Evidence Authentic and Exculpatory Documentary Evidence", 30 January 1998, para. 10, 12; *Prosecutor v. Delacic et al.*, "Decision on the Motion of the Prosecution for the Admissibility of Evidence", 19 January 1998, para. 16.



FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 20 October 2006.


Asoka de Silva
Presiding Judge




Seon Ki Park
Judge

[Seal of the Tribunal]