



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 09 November 2006

The PROSECUTOR

v.

Elie NDAYAMBAJE, Joseph KANYABASHI, Pauline NYIRAMASUHUKO, Arsène Shalom NTAHOBALI, Sylvain NSABIMANA, Alphonse NTEZIRYAYO

Joint Case No. ICTR-98-42-T

ORAL RULING OF 9 NOVEMBER 2006 ON THE ADMISSIBILITY OF WITNESS
AGWA'S TESTIMONY REGARDING A MEETING AT KIGEMBE IN JUNE 1994

Office of the Prosecutor

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Mr. Titinga Frédéric Pacere, Mr. Richard Perras

See transcripts of 9 November 2006, pp 11-12.

MR. PRESIDENT:

Yes.

"This is the oral ruling on the issue relating to the admissibility of Witness AGWA's testimony regarding a meeting at Kigembe in June 1994. The Chamber has considered all the submissions of the parties, heard orally on the 8th and 9th November 2006. The Chamber recalls that the Defence teams of Ntahobali and Nyiramasuhuko orally argued against the admissibility into evidence of

Defence Witness AGWA's testimony regarding a meeting allegedly held in June 1994 at Kigembe, Butare, and prays for the Chamber to expand the testimony of AGWA on the said meeting at Kigembe, or alternatively, that the Chamber suspends the hearing of the testimony on this matter to conduct investigations.

3. The Chamber notes that it has -- it is not contested that the will-say statement of Defence Witness AGWA was filed on 17th October 2006, which mentioned, for the first time, that AGWA will testify about the meeting allegedly held in June at Kigembe, in Butare.

4. The Chamber recalls that Rule 67(D) provides that:

"(1) if either party discovers additional evidence or information or material which should have been produced either earlier -- which should have been produced earlier, pursuant to the rules, that party shall promptly notify the other party, and the Trial Chamber of the existence of the additional evidence or information or material."

5. The Chamber notes that three weeks has elapsed from the time when the will-say statement was filed, to the time when the witness started his testimony. In the Chamber's opinion, three weeks notice is sufficient enough for a diligent defence to prepare for a cross-examination of AGWA in respect of the said meeting at Kigembe.

6. The Chamber observes that whilst the allegation of Witness AGWA in relation to the meeting at Kigembe, may not have been specifically pleaded in the indictment against Ntahobali and Nyiramasuhuko, this alone does not render the evidence inadmissible. This is in line with the Appeals Chamber decision of 2nd July 2004 in the Ntahobali and Nyiramasuhuko versus Prosecutor, case relating to the admissibility of the evidence of Witness RV and QBZ.

Indeed, the said allegation, may be relevant to the proof of other counts of the indictment. The Chamber notes that both Accused, Nyiramasuhuko and Ntahobali are jointly charged with conspiracy to commit genocide, together with the other accused persons in this trial. The Chamber recalls that admissibility of evidence should not be confused with the assessment of the weight to be accorded to that evidence, an issue to be decided by the Trial Chamber after hearing the totality of the evidence.

7. Moreover, the Chamber notes that the testimony of Witness AGWA is for the Defence of the Accused Nsabimana, who has a right to a full defence, like all the other accused in a joint trial, pursuant to Rule 82 of the Rules of Procedure -- of the rules. The Chamber observes that both Accused, Ntahobali and Nyiramasuhuko, have the right to cross-examine the witness, and any accused person could, if justified, have a right to a rejoinder on a specific issue.

8. Finally, the Chamber considers that the decision of Trial Chamber I referred to by Mr. Marquis, Learned Counsel, is clearly distinguishable from the issues addressed in this motion. For the above reasons, the Chamber denies the motion in all its respect, and the testimony of Witness AGWA shall continue."

Yes, that is the decision of the Trial Chamber on this issue.