



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
14-02-2007
(32412-32410)

32412

S. Muna

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Aleksevich Egorov

Registrar: Adama Dieng

Date: 14 February 2007

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

2007 FEB 14 10 21
JUDICIAL RECORDS ARCHIVES
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DECISION ON BAGOSORA REQUEST FOR CERTIFICATION CONCERNING
ADMISSION OF STATEMENT OF WITNESS LG-1/U-03

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

The Defence

Raphaël Constant
Allison Turner
Paul Skolnick
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Cgetto
Gershon Gachi Bw'Omanwa

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the "Requête de la Défense de Bagosora visant la certification de l'appel" of the Decision on Defence Motion for Admission of Statement of Witness LG-1/U-03 Under Rule 92 *bis*, filed on 14 December 2006";

HEREBY DECIDES the request.

INTRODUCTION

1. The Bagosora Defence requests leave to appeal the Chamber's written decision of 11 December 2006, which declined to admit the statement of Witness LG-1/U-03 under Rule 92 *bis*.¹ The witness was scheduled to testify before the Tribunal in the summer of 2005 but ultimately did not due to scheduling difficulties. After becoming ill thereafter, he provided a written statement to the Nsengiyumva Defence. The witness died on 10 February 2006. The Chamber denied admission of four paragraphs of the witness statement because they concerned the acts and conduct of the Accused, which is not admissible under Rule 92 *bis* (A).²

2. In its request for certification, the Bagosora Defence argues that denying admission of the statement of Witness LG-1/U-03 in its entirety deprives the Defense of its right to respond to evidence presented through Prosecution Witnesses DA, HN, and ZF.³ Of the four excluded paragraphs, two paragraphs contain only references to the Rwandan Armed Forces and the transmission center and do not specifically mention either Bagosora or Nsengiyumva.⁴ The remaining two paragraphs do not describe actual conduct of the Accused and merely explain that the witness was aware of all incoming and outgoing communications and that if either Accused had sent a message or made a telephone communication as alleged by the Prosecution, the witness would have known about it.⁵

DELIBERATIONS

3. Certification may be granted under Rule 73 (B) of the Rules of Procedure and Evidence when a decision "involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings".

4. The Appeals Chamber has previously held that the Trial Chamber, as trier of fact, bears the primary responsibility for admission of evidence and that certification must be "the

¹ *Bagosora et al.*, Decision on Defence Motion for Admission of Statement of Witness LG-1/U-03 Under Rule 92 *bis* (T), 11 December 2006. The Chamber admitted paragraphs 1 to 19 and 24 to 25 but found paragraphs 20 to 23 to be inadmissible.

² Decision, paras. 1, 9. Rule 92 *bis* (A) provides: A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.

³ Request para. 8.

⁴ Request para. 29.

⁵ Request paras. 12, 15.

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absolute exception when deciding on the admissibility of evidence".⁶ According to Rule 92 *bis* (A), a witness statement may be admitted in lieu of oral testimony so long as the evidence contained in the statement does not go to "the acts and conduct of the accused as charged in the indictment". The Chamber applied this rule to the statement of Witness LG-1/U-03 and found that four paragraphs concern the acts and conduct of the Accused and are consequently inadmissible. Given the straightforward application of Rule 92 *bis* (A), the Chamber does not believe that a decision by the Appeals Chamber would affect the fair and expeditious conduct of the proceedings or the outcome of trial.

5. The parties completed the presentation of evidence on 12 December 2006, with the exception of three French Officers who testified from 15 to 18 January 2007. Otherwise, the parties have closed their respective cases. Only final briefs and closing arguments remain. Thus, certification would not materially advance the proceedings.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the request for certification.

Arusha, 4 January 2007



Erik Mese
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁶ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5. See also *Bagosora et al.*, Decision on Bagosora Request for Certification Concerning Admissibility of Prosecution Exhibit P-417 (TC), 15 November 2006, para. 2.



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COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afande
From:	<input checked="" type="checkbox"/> Chamber I Judge Mose Judge Reddy Judge Egorov (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. BAGOSORA ET AL.			Case Number: ICTR-98-41-T
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Filing Party hereby submits only the original, and will **not submit** any translated version.

Reference material is provided in annex to facilitate translation.

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CMS SHALL NOT take any action regarding translation.

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