



ICTR-97-31-T
07-05-2007
International Criminal Tribunal for Rwanda
Tribunal pénal International pour le Rwanda

(4720-4718)

4720
1494

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 7 May 2007

THE PROSECUTOR

v.

Tharcisse RENZAHO

Case No. ICTR-97-31-T

2007 MAY -7 P 3 20
JUDICIAL RECORDS/ARCHIVES
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**DECISION ON CERTIFICATION FOR APPEAL CONCERNING EXCLUSION OF
TESTIMONY AND ADMISSION OF EXHIBIT**

The Prosecution

Jonathan Moses
Katya Melliush
Ignacio Tredici
Shamus Mangan

The Defence

François Cantier
Barnabé Neukuit

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Mese, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the Defence "Requête aux fins de certification d'appel de la décision relative à la requête en exclusion d'une déposition" etc., filed on 23 April 2007;

CONSIDERING the Prosecution Response, filed on 25 April 2007; and the Defence Reply, filed on 4 May 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. On several occasions, the Prosecution attempted to tender as an exhibit an audio tape allegedly containing incriminating statements made by the Accused. On 2 March 2007, the Chamber ruled against a Defence request to exclude the testimony of a journalist who purportedly made the recording.¹ In its decision of 20 March 2007, the Chamber gave reasons for its oral ruling and decided to admit the recording as an exhibit.² The Defence requests certification for appeal of that decision. The Prosecution opposes the request.

DELIBERATIONS

2. According to Rule 73 (C) of the Rules of Procedure and Evidence, requests for certification shall be filed within seven days of the filing of the impugned decision. The Defence filed its motion for certification twenty-seven days after the deadline imposed under Rule 73 (C) and is now time-barred from requesting certification. The Prosecution did not address the issue of timeliness. The Chamber will, on an exceptional basis, address the substance of the Defence's request.

3. Leave to file an interlocutory appeal may be granted under Rule 73 (B) where the decision in question "involves an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial" and where "in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings". The Appeals Chamber has emphasized that Rule 89 (C) grants a Trial Chamber a broad discretion in assessing admissibility of evidence. It is first and foremost the responsibility of the Trial Chambers, as triers of fact, to determine which evidence to admit during the course of the trial. Certification of an appeal "has to be the absolute exception when deciding on the admissibility of the evidence".³

(i) Exclusion of Testimony

4. The Defence argues that the testimony of the journalist should have been excluded because adequate notice of the testimony was not given.⁴ The Chamber has already addressed

¹ T. 2 March 2007 p. 25.

² Decision on Exclusion of Testimony and Admission of Evidence (TC), 20 March 2007.

³ *Nyiramasuhuko v. Prosecutor*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, paras. 5, 7.

⁴ Motion, paras. 19-20.

this issue twice. In its decision of 16 February 2006, it found that allowing the journalist to testify would not result in unfair prejudice to the Accused, as the Defence had had sufficient time to prepare for the testimony.⁵ The Chamber reiterated this view in its decision of 20 March 2007, after having considered the Defence's additional arguments.⁶ The request for certification generally repeats previous arguments. The Defence has not shown that the Chamber's decision not to exclude the testimony involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

5. In considering a motion for certification for appeal, the Trial Chamber will consider whether a showing has been made that the appeal could succeed. This threshold will be met, for example, by showing some basis to believe that the Chamber committed an error as to the applicable law; that it made a patently incorrect conclusion of fact; or that it was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.⁷ The Defence has not met this burden. It has not been demonstrated that an immediate resolution by the Appeals Chamber would materially advance the proceedings.

(ii) Admission of Audio Tape

6. The Defence submits that it did not receive sufficient notice that the audio tape included incriminating evidence against the Accused. Furthermore, the tape was obtained illegally and its admission is a violation of Rule 95. These arguments were thoroughly discussed in the Chamber's decision.⁸ The Defence has not shown that the decision is based on an erroneous application of the law, a patently incorrect conclusion of fact, or is unfair or unreasonable. Several of the Defence arguments go to the weight that the Chamber should attach to the recording, not its admissibility.⁹ The Chamber recalls that the admission into evidence does not in any way constitute a binding determination as to the authenticity or trustworthiness of documents sought to be admitted. These are to be assessed by the Chamber at a later stage in the case when considering the probative weight to be attached to the evidence.¹⁰ The Chamber finds that the conditions for granting certification are not satisfied.

**FOR THE ABOVE REASONS, THE CHAMBER
DENIES the request.**

Arusha, 7 May 2007.



Erik Mose
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]



⁵ Decision on Prosecution Motion to Vary the Order of Proceedings (TC), 16 February 2007, para. 6.

⁶ Decision on Exclusion of Testimony and Admission of Evidence (TC), 20 March 2007, para. 10.

⁷ *Prosecutor v. Bagasora et al.*, Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal (TC), 14 February 2007, para. 4.

⁸ Decision on Exclusion of Testimony and Admission of Evidence (TC), 20 March 2007, paras. 11-12, 14-16.

⁹ Motion, paras. 15-18, 23-24 and Reply paras. 3-4 (submitting that the tape cannot prove *mens rea* without a specific context).

¹⁰ *Nyiramasuhuko v. Prosecutor*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7.