



ICTR-98-4-T
08-05-2007
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

(38182 - 38180)

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1494

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 8 May 2007

THE PROSECUTOR

v.

Théoneste BAGOSORA
Gratien KABILIGI
Aloys NTABAKUZE
Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

JUDICIAL RECORDS ARCHIVE
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DECISION ON BAGOSORA REQUEST FOR CERTIFICATION OR
RECONSIDERATION CONCERNING ADMISSION OF CORRESPONDENCE

The Prosecution

Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Kartik Murukutla

The Defence

Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
Marc Nerenberg
Kennedy Ogetto
Gershon Otachi 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 “Bagosora Defence Request for Certification or Reconsideration” etc. of the Trial Chamber’s decision of 21 March 2007, filed on 28 March 2007;

HEREBY DECIDES the request.

INTRODUCTION

1. On 28 February 2007, the Defence filed a motion to admit into evidence certain correspondence between the Registry and the Rwandan authorities.¹ The documents included inquiries by the Registry as to whether the Rwandan Government has the arrest warrant against the Accused Bagosora as well as its supporting materials, and the Government’s response confirming possession of the arrest warrant. In its decision of 21 March 2007, the Chamber declined to admit the documents into evidence.² The Defence requests the Chamber to grant certification to appeal or, alternatively, to reconsider its decision.

DELIBERATIONS

Certification

2. Pursuant to Rule 73 (B), certification to appeal may be granted if the challenged 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”. The latter includes a consideration of “whether a showing has been made that the appeal could succeed. That threshold would 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.”³

3. Certification is sought on the basis that the Chamber erred in finding that the Defence motion was filed after the close of its case, and that the documents were “marginally significant”.⁴ The Defence argues that its case cannot be regarded as closed until all outstanding issues are resolved and its final arguments are completed.⁵ The Chamber considers that this argument overlooks the need for finality. The Bagosora Defence was expected to close its case by 13 October 2006. The Chamber has subsequently allowed the admission of some evidence. In January 2007, only the Defence teams for Accused Nsengiyumva and Kabiligi were permitted to present evidence. The Prosecution filed its Closing Brief on 1 March 2007.

¹ *Bagosora et al.*, Bagosora Defence Motion to Tender Documents into Evidence, filed 28 February 2007.

² *Bagosora et al.*, Decision on Bagosora Motion to Admit Documents (TC), 21 March 2007 (“Decision”).

³ *Bagosora et al.*, Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal, 16 February 2006, para. 4 (relying on *Milosevic*, Decision on Interlocutory Appeals of the Trial Chamber’s Decision on the Assignment of Defence Counsel (TC), 1 November 2004, para. 10).

⁴ Request, paras. 21-22, 34.

⁵ Request, paras. 23-33.

4. In its motion of 28 February 2007, the Defence emphasised the lack of reference in the Rwandan Government's response to any materials supporting the arrest warrant. The Defence argued that this amounted to an admission that such materials did not exist, and that this is relevant and significant. The Chamber disagreed with the Defence's deduction, and found the correspondence neither relevant to the charges nor probative in value.⁶ The Chamber observes that the Defence is now reiterating its argument, and not claiming that an incorrect legal standard was applied to the materials in question, or that the Chamber made an error of fact in applying that legal standard. The Defence simply disagrees with the manner in which the Chamber has exercised its discretion. The Appeals Chamber has ruled that this kind of factual determination is not appropriate for certification.⁷ Under Rule 89 (C), the Trial Chamber has the discretion to determine whether or not to admit evidence, based on its relevance and probative value. The Appeals Chamber has held that certifications should not be ordinarily granted on questions of admissibility of evidence, but are rather "the absolute exception".⁸ The Chamber finds no such exception in the present circumstances.


Reconsideration


5. Reconsideration is sought as an alternative to certification. This exceptional measure is justified when there have been new circumstances since the filing of the challenged decision that affect the premise of the decision.⁹ It can also be permissible where the challenged decision was erroneous in law or an abuse of discretion.¹⁰ There is no new circumstance which has arisen since the Chamber's decision of 21 March 2007, and which may affect it. Furthermore, as demonstrated above, the challenged decision was not erroneous in law or an abuse of discretion. Reconsideration is therefore not justified.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the request.

Arusha, 8 May 2007


Erik Måse
Presiding Judge


Jai Ram Reddy
Judge


Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁶ Decision, para. 6 ("... inferences that the Defence asks the Chamber to draw from the absence of a response from the Rwandan government do not directly implicate the commission of a crime with which the Accused is charged, and they are of a tenuous nature.")

⁷ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5.

⁸ *Id.*; *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 10.

⁹ *Bagosora et al.*, Decision on Prosecutor's second motion for reconsideration of the Trial Chamber's "Decision on Prosecutor's motion for leave to vary the witness list pursuant to Rule 73 bis (E)" (TC), 14 July 2004, para. 7; *Bagosora et al.*, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73 bis (E)", 15 June 2004 ("*Bagosora* Decision of 15 June 2004"), para. 9.

¹⁰ *Bagosora* Decision of 15 June 2004, para. 9; *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11.