

ICTR-00-56-T
25-07-2007
(64415 - 64412)

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UNITED NATIONS
NATIONS UNIES

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: 25 July 2007

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

**DECISION ON NZUWONEMEYE'S MOTION FOR RECONSIDERATION OF THE
CHAMBER'S ORAL DECISION DATED 11 MAY 2007 REGARDING ADMISSION
OF EXHIBITS P.132 AND P.135**

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 Vincent Lurquin for Augustin Ndindiliyimana
Mr Charles Taku and Ms Beth Lyons for François-Xavier Nzuwonemeye
Mr Fabien Segatwa and Mr Seydou Doumbia for Innocent Sagahutu

INTRODUCTION

1. On 17 May 2007, the Defence for Nzuwonemeye filed the current Motion confidentially, requesting the Trial Chamber to reconsider its Oral Decision rendered on 11 May 2007¹ regarding the admission of Exhibits P.135 (investigation report of the Belgian police dated 1 December 1997) and P.132 (the plea agreement of George Ruggiu) during the cross-examination of Defence Witness DE8-10/F9.² On 21 May 2007, the Prosecution filed a response opposing the Defence Motion.³

SUBMISSIONS

2. The Defence requests the Chamber to reconsider its Oral Decision admitting both Exhibit P.135 (the Belgian investigation report) and P.132 (the Ruggiu plea agreement) on the ground that the potential prejudicial effect of these documents outweighs their probative value. The Defence submits that the Belgian report was not taken during a judicial proceeding. There is nothing to show the context within which it was taken in Belgium, and in particular, whether the circumstances under which it was taken are consistent with the fair trial standards observed at the Tribunal. Furthermore, the Defence submits that since the maker of Exhibit P.135 was initially listed by the Prosecution as Witness DF, and dropped off their list without explanation, admitting his extra-judicial statement would amount to introducing his evidence through the back door, without giving the Defence an opportunity to cross-examine him. The Defence submits that the fact that the maker of Exhibit P.135 was listed as a Prosecution witness only became apparent to it later on, and was not disclosed by the Prosecution at the time it tendered the document. It submits that the Chamber might have reached a different conclusion on the issue of admissibility if this fact had been known to it. The Prosecution responds that Exhibit P.135 was admitted for the limited purpose of challenging Witness DE8-10/F9's credibility on a specific point.

3. With respect to Exhibit P.132 (the Ruggiu plea agreement), the Defence submits that its admission violates the rights of the Accused under Article 20 of the Statute. It adds that by its very nature, a guilty plea agreement is a self-serving document concluded with a view to securing an advantage to the Accused. As such, it would be unsafe to rely on this document to impugn the sworn testimony of a witness before the Chamber. The Prosecution claims that portions of Ruggiu's plea agreement are relevant to the issue before the Chamber.

DELIBERATIONS

4. The Chamber recalls its earlier Decisions stating that in order for a Motion for Reconsideration to succeed, the moving party must demonstrate the discovery of a new fact, which, had it been known by the Chamber at the time, would not have allowed it to render the decision; or that there has been a material change in circumstances; or finally, that the previous decision was erroneous and therefore prejudicial to either party.⁴

¹ Oral Decision (TC), T.11.05.07, pp.42-46, 72-78.
² Nzuwonemeye's Motion For The Trial Chamber's Reconsideration Of Its Oral Decision, Rendered 11 May 2007, in respect to the Admission of Exhibit P.132 (Plea Agreement Of George Ruggiu) and P.135 (Investigation Report Of Belgium Police), 17 May 2007 (Nzuwonemeye's Motion), paras.2,3, p.8.
³ Prosecutor's Response To Nzuwonemeye's Motion For The Trial Chamber To Reconsider Its Oral Decision To Admit Prosecution Exhibits P.132 and P.135 In Evidence, Witness DE8-10/F9, 21 May 2007 (Prosecutor's Response), p.6.
⁴ Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials(TC), 3 November 2004, para.21; Decision on Nzuwonemeye's Motion for

(i) Investigation report containing the statement of a person before Belgian authorities (P.135)

5. The Chamber notes that Exhibit P.135 is a police investigation report pertaining to the statement of a person given during criminal investigations in Belgium. Although the person whose statement is in Exhibit P.135 had previously been listed as a Prosecution witness in this case, he was never called to testify before the Chamber. Instead, the Prosecutor tendered Exhibit P.135 to contradict the testimony of Defence Witness DE8-10/F9 on a particular issue relevant to the trial.

6. The Chamber recalls that the jurisprudence of this Tribunal has adhered to the principle of orality defined in Rule 90(A), subject to the exceptions prescribed by Rules 71 and 92bis.⁵ If the Prosecution intended to rely on the evidence of the person whose statement is contained in Exhibit P.135, it should have called him as a witness, or, provide a sufficient explanation why he could not be called. Having failed to do so, it would be unfair and prejudicial to the Accused if the Chamber admits the out-of-court statement of a person who never appeared before the Chamber, to challenge the credibility of a witness giving evidence, sworn to tell the truth, and tested by cross-examination. The Chamber considers that the potential prejudicial effect of this statement outweighs its probative value and therefore reconsiders its Oral Decision admitting it as an exhibit.

(ii) Plea Agreement of George Ruggiu (P.131 and P.132)

7. With respect to the Ruggiu's plea agreement, the Chamber notes that a guilty plea process involves a bargain between the Prosecutor and an accused person through which certain considerations are traded. The contents of a plea agreement reached under such circumstances are therefore best viewed as exclusively reflecting the promises and responsibilities of the Parties thereto. They do not have an effect on third parties. In the context of a criminal trial, especially one for serious violations of international law, it would be unsafe to accept as proof against third parties, admissions of fact made by an accused person in his plea agreement. In this sense, factual admissions in a plea agreement must be distinguished from adjudicated facts by a Trial Chamber, which under appropriate circumstances, could be taken judicial notice of under Rule 94(B). With respect to the plea agreement of Ruggiu, the Chamber's reasoning is fortified by the fact that in the *Nahimana et al.* case, the Trial Chamber concluded that even Ruggiu's sworn testimony in that trial was so inconsistent and contradictory that he could not be believed.⁶ In the circumstances, the Chamber is satisfied that sufficient grounds exist to reconsider its Oral Decision admitting Exhibit P.132.

Reconsideration of the Chamber's Oral Decision of 14 September 2005 on Admissibility of Witness XXO's Testimony in the Military I Case in Evidence(TC), 10 October 2005, para.11; Decision on Bizimungu's Motion in Opposition to the Admissibility of the Testimonies of Witnesses LMC, DX/ANM, BB, GS, CII/ANI and GFO and for Reconsideration of the Chamber's Decision of 13 May 2005(TC), 24 November 2005, para. 18.

⁵ *The Prosecutor v. Aloys Simbu*, Case No. ICTR-01-76-T, Decision on the Admission of a Written Statement(TC), 25 January 2005, para.4; *The Prosecutor v. François Karera*, Case No. ICTR-01-74-T, Decision on Admissibility of Newspaper Article and Subpoena to Journalist(TC), 23 January 2006, paras.4,5.

⁶ *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-T, Judgement and Sentence (TC), 3 December 2003, para.549.

Decision on Nzuwonemeye's Motion for Reconsideration of the Chamber's Oral Decision dated 11 May 2007 regarding Admission of Exhibits P.132 and P.135

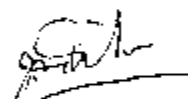
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence Motion and **RECONSIDERS** its Oral Decision of 11 May 2007;

ORDERS the exclusion of Exhibits P.132 (including P.131 as the French version) and P.135;

INSTRUCTS the Registry to take appropriate action to expunge Exhibits P.132 (including P.131 as the French version) and P.135 from the record, and to ensure the consistency of the numbering of the remaining exhibits.

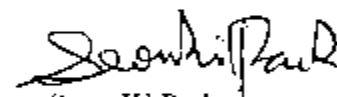
Arusha, 25 July 2007, done in English.



Asoka de Silva
Presiding Judge



Taghrid Hikmet
Judge



Seon Ki Park
Judge

[Seal of the Tribunal]