



SC/6612/07

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-2001-63-T
(22-8-2007)
(2143-2146)

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[Signature]

Or: ENG

TRIAL CHAMBER III

Before: Judge Dennis C. M. Byron, presiding
Gberdao Gustave Kam
Robert Fremr

Registrar: Adama Dieng

Date: 21 August 2007

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-T

[Signature]

DECISION ON MOTION FOR THE ADMISSION OF WRITTEN MATERIALS

Rules 73, 89 (C), 92 bis, 94 (B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Alphonse Van. Senior
Madeleine Schwarz
Lloyd Strickland
Adama Niane
Marilize Keefer

Defence Counsel:

Denis Turcotte
Benoit Henry
Yann Evima Vouma

[Signature]

INTRODUCTION

1. On 8 August 2007 the Defence applied for the admission in evidence of part of the testimony of Gracien Kabiligi in the *Cyangugu* case, the taking of Judicial Notice of documents exhibited in the *Military I* case where Kabiligi was an accused, and the admission in evidence of part of the transcripts of Emmanuel Bagambiki given in his own defence in the *Cyangugu* case.¹ The Defence contends that the testimony does not refer to the acts or conduct of the Accused, is relevant and has probative value and is contained in judicial documents in that the witnesses were subject to cross examination. Moreover the testimony of Kabiligi was confirmed by the documents for which application is also being made. The Prosecution opposes the Motion.²

DISCUSSION

2. Rule 92 *bis* (D) of the Rules of Procedure and Evidence (the "Rules") allows the chamber to admit transcripts of evidence in proceedings before the Tribunal which goes to proof of matters other than the acts and conduct of the accused. The transcripts proffered by the Defence which were exhibited in annexes to the application were all clearly relevant and probative. However in each case they were excluded by the prohibition in rule 92 *bis* (D) because contrary to the submissions of the Defence they go to the proof the acts and conduct of the accused.

3. The testimony of Kabiligi was that he was on an official mission to Egypt between 27 January and 8 February 1994 and goes to rebut evidence that the Accused was at Camp Karambo on 28 January 1994 when a helicopter carrying him and Andre Ntagerura landed and distributed weapons to *Interahamwe* trainees.

4. The proffered testimony of Bagambiki relates to several allegations in the indictment on which supporting evidence has been given. In brief it rebuts the allegation contained in

¹ Requête de la Défense aux fins d'admettre en preuve des compte-rendus de témoignages et de faire dresser le constat judiciaire de moyens de preuve documentaires conformément aux articles 73, 92 bis (D), 94 (B) et 89 (C) du Règlement de procédure et de preuve, filed on 9 August 2007

paragraph 10 of the Indictment and the supporting testimony that Nchamhigo was present at a Prefectural Security Council meeting on 11 April 1994 during which the main agenda item was the killing of the Tutsi. It denies the allegations in paragraphs 38 through 42 of the Indictment and supporting evidence of the role of Nchamhigo in the killing of 17 people who had been transferred from the Cathedral to the stadium and later removed from the stadium. It rebuts the allegations in the Indictment and the testimony that the Accused as deputy prosecutor used his authority to plan and execute genocide and crimes against humanity. It refutes the allegations in paragraph 20 (a) of the Indictment and supporting testimony that at a meeting convened by Bagambiki on 14 April 1994 the Accused sought and received assistance to perpetrate a massacre of refugees at Shangi Parish and that he ordered or led the attack. It rebuts allegations in the Indictment and supporting evidence of the participation of the Accused in Prefectural Security Council meetings that were alleged to have planned the genocide and it also attests to the conduct of the prosecutor's office in which the accused worked. Finally it rebuts the allegations in the Indictment and supporting testimony that the Accused was one of the authorities responsible for training, arming and mobilizing the *Interahamwe*.

5. The Defence also submits that judicial notice be taken of the documents which were exhibited in the *Military I* case pursuant to Rule 94 (B) of the Rules which permits the Chamber to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the tribunal relating to the matter at issue in the current proceedings.

6. The Prosecution submits that Kabiligi should be called to authenticate the documents to permit their presentation in the usual manner in the trial. The Chamber finds that the correspondence between the Office of the Prosecutor and the Government of Egypt does not need authentication by Kabiligi and there could be no reason for taking judicial notice of those exhibits. However, in light of the ruling regarding the exclusion of his transcripts it would seem consistent with that ruling to refuse to take judicial notice of his mission report and to recall the Prosecution's suggestion that he be called to authenticate it and present it in evidence should the Defence require it to be included in the presentation of its case.

FOR THESE REASONS, THE CHAMBER

1. **DENIES** the motion with regard to all transcripts of evidence;

² Prosecutor's Response to the « Requête de la Défense aux fins d'admettre en preuve des compte-rendus de témoignages et de faire dresser le constat judiciaire de moyens de preuve documentaires », filed on 15 August 2007.

- I. **DENIES** the motion with regard to those documentary exhibits that relate to the Kabiligi mission report.
- II. **ALLOWS** the motion with regard to the documentary exhibits of the correspondence between the Office of the Prosecutor and the Government of Egypt.

Arusha, 21 August 2007, done in English.



Dennis C. M. Byron

residing Judge



With the consent and on behalf of
Gberdao Gustave Kam
Judge
(Absent during signature)



With the consent and on behalf of
Robert Fremr
Judge
(Absent during signature)

[Seal of the Tribunal]

