



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 5 November 2007

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T**

**DECISION ON THE PROSECUTION MOTION FOR RECONSIDERATION OF
ORAL DECISIONS OF 25 JUNE 2007 AND 03 JULY 2007 CONCERNING
ADMISSION INTO EVIDENCE OF DOCUMENTS MARKED I-P-005 AND I-P-006**

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INTRODUCTION

1. On 25 June 2007, in the course of the examination-in-chief of Witness Jean Bosco Twahirwa (“Witness”), the Prosecution sought to admit into evidence as one “comprehensive exhibit”¹ three documents, purportedly recovered stapled together from the RPF Archives: 1) A compromise agreement signed by the Witness concerning a complaint, he had made, 2) A handwritten cover note with the signature “Aminadahabu Buhave”, addressed to Mathieu Ngirumpatse, President of MRND, and referring to a security report concerning the Witness and 3) A handwritten Security Report with the signature “Uzabakiliho Jean Baptiste”, referring *inter alia* to the Witness’ complaint. The Witness recognised item 1), but stated that he had not seen items 2) and 3) before a meeting with the Prosecutor.

2. Following objections by Counsel for Nzirorera and Counsel for Ngirumpatse,² the Chamber ruled that the proper course would be only to admit item 1) into evidence as Exhibit P-089, and to have the other two items marked as I-P-005 and I-P-006 respectively for identification purposes only.³

3. On 03 July 2007, during the re-direct examination of the Witness, the Prosecution once again sought to admit into evidence items I-P-005 and I-P-006.⁴ Counsels for the Accused again opposed their admission,⁵ and the Chamber denied the request “at the present stage”.

4. On 16 August 2007, the Prosecutor filed a Motion, moving the Chamber primarily 1) to reconsider its Oral Decisions and admit into evidence items I-P-005 and I-P-006 or in the alternative 2) to admit the items into evidence under Rule 89 (C) of the Rules on Procedure and Evidence (“Rules”). To the Motion as Annex A-D was attached new material.

5. Counsel for Ngirumpatse opposes the applications, whereas Counsel for Nzirorera indicates that he does not object to I-P-005 and I-P-006 being admitted into evidence, as long as no inference is drawn that the documents were found at MRND headquarters.⁶

DELIBERATIONS

¹ See TT 25 June 2007 at pp. 48 and 49, lines 27 to 33.

² See TT 25 June 2007 at p. 50.

³ See TT 25 June 2007 at pp. 52 and 53.

⁴ See TT 02 July 2007 at pp. 51 – 54.

⁵ See TT 02 July 2007 at p. 54.

⁶ MEMOIRE pour M. NGIRUMPATSE sur la Requête du Procureur aux fins d'obtenir le réexamen des décisions orales du 25 juin 2007 et du 3 juillet 2007 (sic) relatives à l'admission en preuve des documents I-P005 et I-P006

Preliminary issue

The Chamber notes that when ruling during proceedings that an item, which has not been recognized by the witness being examined, cannot be admitted into evidence, but only marked for identification purposes, the Chamber does not make a final ruling on the admissibility of the item in the sense, that the Party in question must meet the high threshold for the ruling to be reconsidered, if that Party afterwards procure further foundation for the item to be admitted into evidence, be it through another witness or on the basis of other material. Since the Prosecutor has procured new material to substantiate his request, the Chamber will consider the request on this basis pursuant to Rule 89 (C) of the Rules on Procedure and Evidence (“Rules”) and reject the request for reconsideration as moot.

Applicable Law

6. Rule 89 (C) provides that “[a] Chamber may admit any relevant evidence which it deems to have probative value”. According to the Appeals Chamber, the first step in the determination of whether a document is admissible is to ascertain whether sufficient indicia of reliability have been established.⁷ While a Chamber always retains the competence under Rule 89(D) to request verification of the authenticity of evidence obtained out of court, “to require absolute proof of a document's authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Sub-rule 89 (C).”⁸

On reliability

7. Counsel for Ngirumpatse argues that since the Witness has procured another document, incriminating Mathieu Ngirumpatse and ostensibly signed by him, but later found to be forged, the Chamber should not trust documents relating to this Witness, originating from the PRF Archives as being authentic.

8. The Chamber notes that it is not in dispute that all 3 documents as affirmed by the affidavits of PRF archivist Mukagatare Venantie and Office of the Prosecutor (“OTP”) investigator Adama Niane, annexed to the Motion, were procured by the OTP from the PRF

⁷ See *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7; *Prosecutor v. Georges Anderson Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), para. 33; *Prosecutor v. Delalic and Delic*, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998.

⁸ *Prosecutor v. Delalic and Delic*, Case No. IT-96-21, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998 (“*Delalic* Appeals Decision on the Admissibility of Evidence”).

Archives and have been in the possession of the OTP since then, or that exhibit P-089, item 1, having been admitted into evidence, is authentic. Furthermore as to I-P-005 the Chamber is satisfied by the samples of documents with Aminadahabu Buhave's handwriting, annexed to the Motion, that the Prosecutor has made a *prima facie* showing that the document originates from the said person. Moreover as I-P-006 refers to both P-089 and I-P-005 the Chamber is also satisfied that a *prima facie* showing has been made as to the authenticity of I-P-006. Whether an inference may be drawn that the documents were found at MRND headquarters goes to the issue of probative value.

Relevance and probative nature

9. I-P-005 and I-P-006 are closely related to exhibit P-089, which - without objections from the Defence- was admitted into evidence, because the exhibit corroborated the Witness' testimony in relation to Mathieu Ndirumpatse's alleged control over the Interahamwe, as pleaded in the Indictment. I-P-005 and I-P-006, being about the same issue, have the same relevance.

10. The Chamber further notes that whereas exhibit P-089 in connection with the Witness' testimony tends to prove that Mathieu Ndirumpatse's intervened in support of the Witness and was successful, I-P-005 and I-P-006 tend to prove that the local MRND leader reported or intended to report back to Mathieu Ndirumpatse on the matter. The Chamber is therefore satisfied that a *prima facie showing* has been made of the probative nature of the two documents. Whether a further inference can be made that Mathieu Ndirumpatse did receive the documents is an issue of the weight to be attributed to the documents which will be determined by the Chamber at the end of the trial.

FOR THOSE REASONS, THE CHAMBER

- I. DENIES** the Prosecutor's application for reconsideration of the Oral Decisions rendered on 25 June 2007 and 03 July 2007 refusing the admission of the items I-P-005 and I-P-006, as moot.
- II. GRANTS** the Prosecutor's application for admission into evidence of the documents identified as I-P-005 and I-P-006 under Rule 89 (C); and accordingly,

III. REQUESTS the Registrar to assign these two documents with an exhibit number in the instant case

Arusha, 5 November 2007, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]