

1189/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-00-55A-A
21 November 2007
(1189/H - 1186/H)

P.T.

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar:

Mr. Adama Dieng

Decision of:

16 November 2007

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ACTION:
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THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-A

ICTR Appeals Chamber
Date: *21 November 2007*
Action: *PT*
Copied To: *Concerned Jdgs*
SPS, LOS, HOS, LSC

Archived *[Signature]*

Public

**Decision on Motion for Reconsideration of the Decision on Request to Admit
Additional Evidence**

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Ms. Linda Bianchi
Ms. Renifa Madenga
Mr. François Nsanzuwera
Ms. Evelyn Kamau

Counsel for Tharcisse Muvunyi:

Mr. William E. Taylor III
Ms. Abbe Jolles
Mr. Dorian Cotlar

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
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NAME / NOM: *Patrice Tchidimbo*
SIGNATURE: *[Signature]* DATE: *21/11/07*

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THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("International Tribunal"),

NOTING the "Accused Tharcisse Muvunyi's Motion to Take Testimony on Appeal Pursuant to Rule 115" filed confidentially on 28 May 2007 ("Motion") by Tharcisse Muvunyi ("Applicant") in which he sought leave to call, *inter alia*, Witness AND72 to give evidence on appeal;¹

NOTING the "Decision on Request to Admit Additional Evidence" issued on 27 August 2007 ("Impugned Decision"), in which the Appeals Chamber dismissed the Motion on the grounds that the Applicant had not shown how the proffered evidence, if admitted, would have impacted the verdict, and concluded that it was not satisfied that the exclusion of the evidence would result in a miscarriage of justice;²

BEING SEIZED OF the "Accused Tharcisse Muvunyi's Motion to Reconsider the Appeals Chamber's Decision on Holding a Hearing Pursuant to Rule 115 to Hear Evidence from Witness AND72" filed confidentially on 18 September 2007 ("Motion for Reconsideration"), in which the Applicant seeks (1) reconsideration of the Impugned Decision, and (2) the granting of a hearing to take the testimony of Witness AND72;³

NOTING the "Prosecutor's Response to 'Accused Tharcisse Muvunyi's Motion to Reconsider the Appeals Chamber's Decision on Holding a Hearing Pursuant to Rule 115 to Hear Evidence from [Witness] AND72'" filed confidentially on 28 September 2007 ("Prosecution's Response"), in which the Prosecution opposes the Motion for Reconsideration;

NOTING that the Applicant did not file a reply;

¹ The Prosecution filed confidentially the Prosecutor's Response to "Accused Tharcisse Muvunyi's Motion to Take Testimony on Appeal Pursuant to Rule 115" on 28 June 2007. "Accused Tharcisse Muvunyi's Reply to Prosecution's Response to his Motion to Take Testimony on Appeal Pursuant to Rule 115" was filed on 10 July 2007.

² Impugned Decision, para. 14.

³ The Appeals Chamber notes that although the Applicant had sought in the Motion the admission of the evidence of Witnesses AND14 and AND72, in his Motion for Reconsideration his submissions are limited to Witness AND72.

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RECALLING that the Appeals Chamber has inherent discretionary power to reconsider its previous decisions if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent injustice;⁴

CONSIDERING that in his Motion, for Reconsideration the Applicant submits that, (1) on account of his former position, Witness AND72 is a crucial witness who would offer "exculpatory, relevant [and] credible evidence" which would contradict Witness YAQ's testimony on which the Trial Chamber solely relied in making a finding on the Applicant's speech;⁵ and (2) this crucial issue was not presented in the Motion as a result of Counsel's negligence or inadvertence and should be admitted in order to avoid a miscarriage of justice;⁶

CONSIDERING that the Applicant further submits in support of his request that, on account of his former position, Witness AND72 would have known of any meetings in Gikonko secteur, that there were no public meetings held in Mugusa commune during April or May 1994, and, further, that this information corroborates the evidence of Witness MO48 to this effect at trial;⁷

CONSIDERING that the Prosecution responds that, (1) the Defence Counsel's negligence in mentioning evidence relating to the issue at hand cannot form the basis for reconsideration,⁸ and (2) the Motion for Reconsideration fails to meet the test applicable to reconsideration;⁹

CONSIDERING that the Motion for Reconsideration principally seeks the admission of additional evidence allegedly challenging the Applicant's conviction for direct and public incitement to commit genocide based on a speech that he gave to members of the population of Gikonko during a meeting in April or May 1994;¹⁰

⁴ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration, 1 December 2006, para. 6; *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-A, Decision on the Appellant's Request for Reconsideration of the Order Concerning Aloys Simba's Appellant's Brief, 8 November 2006, p. 2; *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-A, 23 May 2005, Judgement, para. 203; *The Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, p. 2.

⁵ Motion for Reconsideration, paras 5, 7, 9, 13.

⁶ Motion for Reconsideration, paras 4, 14.

⁷ Motion for Reconsideration, paras 7, 9, 10, 11, 12.

⁸ Prosecution Response, paras 5, 11.

⁹ Prosecution Response, paras 6, 7, 9. Although the Applicant submits that this issue was not presented in the Motion as a result of Counsel's negligence or inadvertence, the Appeals Chamber will limit its discussion to the criteria for reconsideration outlined above.

¹⁰ Motion for Reconsideration, paras 3-5; *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Judgement and Sentence, para. 507.

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CONSIDERING, however, that the Impugned Decision found that the proposed evidence of Witness AND72 was available at trial;¹¹

CONSIDERING, therefore, that such evidence could only be admitted on appeal if it were established that the exclusion of the evidence would amount to a miscarriage of justice;¹²

CONSIDERING that with this evidence, the Applicant intends to show that no public meeting was held in Mugusa commune in April or May 1994;

CONSIDERING, however, that the testimony of Witness AND72 in another case that a meeting chaired by the Applicant was held in Mugusa commune in June 1994,¹³ read in context, would not controvert the testimony of Witness YAQ that the meeting was held in May or June 1994;¹⁴

CONSIDERING, further, that the testimony of both Witness AND72 and Witness YAQ link the meeting to a specific event that followed it, namely the killing of Vincent Nkurikiyinka;¹⁵

CONSIDERING, therefore, that the Applicant has not demonstrated that exclusion of the proposed additional evidence would lead to a miscarriage of justice;

FINDING that the Applicant has failed to show that reconsideration of the Impugned Decision and the request for a hearing of Witness AND72 are necessary in order to prevent injustice;

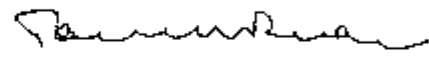
ACCORDINGLY DISMISSES the Motion in its entirety.

Done in English and French, the English version being authoritative.

Done this 16th day of November 2007,
at The Hague,
The Netherlands.



[Seal of the International Tribunal]


Judge Fausto Pocar
Presiding

¹¹ Impugned Decision, para. 11.

¹² Impugned Decision, para. 8; Decision on Request to Admit Additional Evidence, 27 April 2007, para. 7, *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 6.

¹³ *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T ("*Nyiramasuhuko et al.* Case"), T. 6 December 2006, p. 19.

¹⁴ T. 31 May 2005, p. 35.

¹⁵ *Nyiramasuhuko et al.* Case, T. 6 December 2006, p. 20; T. 31 May 2005, pp. 10 -11.

