



ICTR-97-31-T  
12-02-2008  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
(5291-5293)

5295  
1044

ORIGINAL: ENGLISH

**TRIAL CHAMBER I**

**Before:** Judge Erik Mose, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

**Registrar:** Adama Dieng

**Date:** 12 February 2008

**THE PROSECUTOR**

v.

**Tharcisse RENZAHO**

*Case No. ICTR-97-31-T*

12 FEB 12:31 PM 2008  
JUDICIAL RECEIVED  
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

**DECISION ON DEFENCE MOTION TO ADMIT DOCUMENTS**

**The Prosecution**  
Jonathan Moses  
Katya Melliush  
Ignacio Tredici  
Shamus Mangan

**The Defence**  
François Cantier  
Barnabé Neukuie

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Mase, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

**BEING SEIZED OF** the "Requête de la Défense aux fins d'admission des déclarations écrites au dossier" etc., filed on 10 January 2008;

**CONSIDERING** the Prosecution Response, filed on 16 January 2008, and the Defence Reply, filed on 21 January 2008;

**HEREBY DECIDES** the motion.

**INTRODUCTION**

1. The Defence closed its case in the Renzaho trial on 6 September 2007. Both parties submitted their Closing Briefs on 15 November 2007. Oral submissions are scheduled for 14 and 15 February 2008. The Defence now requests admission of two letters and transcripts from the *Bagosora et al.* trial which purportedly show that General Gratien Kabiligi, one of the four accused in that trial, was not in Kigali on 7 April 1994. As this contradicts the testimony of Witness AFB in the Renzaho trial, the Defence argues that the Prosecution should have disclosed the documents under Rule 68 of the Rules.

2. The Prosecution opposes the request and denies that it violated its Rule 68 obligations. The documents were publicly available and the Defence failed to exercise due diligence. Admission of documents at this late stage requires exceptional circumstances that the Defence has failed to demonstrate.

**DELIBERATIONS**

3. According to Rule 92 *bis* (A) of the Rules, a Trial Chamber may admit the evidence of a witness in the form of a written statement instead of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. Referring to Rule 92 *bis* (D) and (E), the Defence seeks to introduce correspondence between the Office of the Prosecutor and Egyptian authorities in 2002, which was admitted in the *Bagosora et al.* trial.<sup>1</sup> It also requests admission of excerpts of the transcripts of the Prosecutor's closing arguments in that trial in 2007.<sup>2</sup>

4. The letters between the Office of the Prosecutor and the Egyptian authorities do not form part of the evidence of any Defence witness in the Renzaho trial. Furthermore, the documents deal with the "acts and conduct" of Renzaho. Even though Kabiligi is not mentioned in the Indictment, Renzaho is charged with having acted together with leaders and

<sup>1</sup> Prosecution Exhibit 232 A (Letter of 12 March 2002 from the Office of the Prosecutor to the Egyptian Ambassador to Rwanda) and B (Letter of 20 June 2002 from the Egyptian Ambassador to the Office of the Prosecutor), both admitted on 7 June 2004. According to the latter, Kabiligi arrived in Egypt on 28 March and left on 8 April 1994.

<sup>2</sup> T. 28 May 2007, in particular p. 13 (French) which corresponds to p. 12 in the English version ("... on the same day, 7 April, the other Accused, Kabiligi, was not in Rwanda. He was outside of Rwanda and while the other three Accused were in Rwanda giving orders and instructions for killings to be carried out, Kabiligi was intent on returning back to Rwanda").

members of the Rwandan armed forces and with having instructed soldiers and been engaged in military training.<sup>3</sup> The Pre-Trial Brief alleges that he invited military leaders, including Kabiligi, to attend meetings after 6 April 1994.<sup>4</sup> According to case law, written statements seeking to contradict evidence that an accused carried out certain acts do not fall within the scope of Rule 92 bis (A).<sup>5</sup> Furthermore, there is no written statement with a declaration by the witness made in conformity with the procedure prescribed by Rule 92 bis (B), or any submissions suggesting an alternative procedure under Rule 92 bis (C). Consequently, Rule 92 bis does not provide a legal basis for admitting the correspondence between the Office of the Prosecutor and the Egyptian authorities.

5. Rule 92 bis (D) allows for the admission of a transcript of evidence given by a witness in proceedings before the Tribunal. The Defence seeks admitted the closing arguments of the Prosecutor in the *Bagorora et al.* trial. However, such submissions are not evidence and cannot be admitted under this provision. This said, transcripts from trial proceedings form part of the Tribunal's judicial record. Nothing prevents the Renzaho Defence from referring to the Prosecutor's statement in the *Bagosora et al.* trial during its closing arguments in the present case.

**FOR THE ABOVE REASONS, THE CHAMBER**

**DENIES** the Defence motion.

Arusha, 12 February 2008



Erik Mase  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Florence Rita Arrey  
Judge

[Seal of the Tribunal]



<sup>3</sup> See, for instance, Indictment, paras. 6, 7-9, 11-14.

<sup>4</sup> Pre-Trial Brief, para. 7.

<sup>5</sup> *Prosecutor v. Bagosora*, Decision on Defence Motion for Admission of Statement of Witness LQ-1/UJ-03 Under Rule 92 bis (TC), 11 December 2006, p. 4; *Prosecutor v. Kamuhanda*, Decision on Kamuhanda's Motion to Admit into Evidence Two Statements by Witness GER in Accordance with Rules 89 (C) and 92 bis of the Rules of Procedure and Evidence (TC), 20 May 2002, para. 29.