



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, Presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Adama Dieng

Date: 2 June 2008

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**DECISION ON DEFENCE MOTIONS TO ADMIT
CHURCH RECORDS AND SCHOOL RECORDS
PURSUANT TO RULE 89 (C)**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
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Counsel for the Defence:

Ms. Michelyne C. St. Laurent for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Michel Croteau and Mr. Philippe Larochelle for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

BACKGROUND

1. This Decision addresses two Defence Motions – filed on 7 and 20 May 2008, respectively – seeking the admission into evidence of certain documents, pursuant to Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”).

Motion of 7 May 2008

2. The Defence Motion of 7 May 2008 seeks the admission of sixteen pages of documents which it says are records from Saint Bernadette’s School in Kamonyi, Gitarama *Préfecture*. The Defence submits that the records are relevant and probative because “they impeach a prosecution witness” who testified that Prosper Mugiraneza was present during an attack on the school.¹
3. The Defence argues that the records demonstrate, contrary to the testimony of the unnamed Prosecution witness, that there was no “Mother Francene” at the Saint Bernadette School.
4. The copies of the records which the Defence seeks to admit are lists described as: a list of professors; a list of personnel; and other lists which appear to be class schedules, as well as letters addressed to various persons. Many of the records bear a stamp which reads “Ecole Ste Bernadette Kamonyi, Diocese de Kabagayi, Republique Rwandaise”.

Motion of 20 May 2008

5. The Defence Motion of 20 May 2008 seeks the admission of a church record related to the baptism and first communion of Henrietta Uwamariya. The Defence submits that the document is relevant and probative because it supports the testimony of an unspecified witness that Ms. Uwamariya participated in a religious ceremony on 3 April 1994.²
6. The evidence the Defence seeks to admit pursuant to this Motion is a copy of a record which purports to be from the Diocese of Kibungo. The Defence identifies the evidence as a copy of “a two-sided card from Rukira Parish in the Diocese of Kibungo related to the baptism ... of Henrietta Uwamariya on 3 April 1994.”
7. The copy of what appears to be one side of the card contains various dates, including the date “3/4/1994” and the name Henriette (*sic*) Uwamariya, along with the names of the parents and other related information. Both sides of the record also appear to bear a stamp from the Diocese of Kibungo.

¹ *Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-99-50-T (“Bizimungu et al.”)*, “Prosper Mugiraneza’s Motion to Admit Documents Pursuant to Rule 89 (C), filed on 7 May 2008.

² *Bizimungu et al., “Prosper Mugiraneza’s Motion to Admit Church Records Pursuant to Rule 89 (C)”*, filed on 20 May 2008.

Prosecution Response

8. The Prosecutor does not oppose the admission of the records but requests that the Chamber attach minimum weight to the documents since they would be “admitted without any opportunity to cross examine whomsoever created them or explore the veracity and provenance thereof.”³

DISCUSSION

9. Under Rule 89 (C), the Chamber has a broad discretion to admit any evidence which it deems to be relevant and of probative value.⁴ The party moving for the admission of the documents bears the burden of establishing *prima facie* that the document is relevant and has probative value.⁵
10. Evidence will be considered relevant, for the purposes of Rule 89 (C), if it can be shown that a connection exists between the evidence and proof of an allegation sufficiently pleaded in the indictment.⁶ Evidence tendered before the Chamber has probative value if it tends to prove or disprove an issue and has sufficient indicia of reliability.⁷

³ *Bizimungu et al.*, Prosecutor’s Response to Prosper Mugiraneza’s Rule 89 (C) Motion to Admit Church Records, filed on 26 May 2008; *Bizimungu et al.*, Prosecutor’s Response to Prosper Mugiraneza’s Rule 89 Motion to Admit Documents, filed on 13 May 2008.

⁴ *Bizimungu et al.*, Decision on Casimir Bizimungu’s Urgent Motion for the Exclusion of the Report and Testimony of Deo Sebahire Mbonyinkebe (Rule 89 (C)) (TC), 2 September 2005 (the “*Bizimungu* Decision”), para 10; *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, Decision on Appeal Regarding Statement of a Deceased Witness (AC), 21 July 2000 (the “*Kordic* Decision”), para. 20; *Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Decision on Kamuhanda’s Motion to Admit Evidence Pursuant to Rule 89 of the Rules of Procedure and Evidence (TC), 10 February 2003, para 10; *Prosecutor v. Edouard Karamera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion to Admit Documents Authored by Enoch Ruhigira (TC), 26 March, 2008 (the “*Karamera* Decision”), para. 3.

⁵ *Bizimungu* Decision, paras. 14-15; the *Karamera* Decision, para. 3 (citing *Prosecutor v. Theoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Bagosora Motion to Exclude Photocopies of Agenda (TC), 11 April 2007); *Bagosora et al.*, Decision on Request to Admit United Nations Documents Into Evidence Under Rule 89 (C) (TC), 25 May 2006, para. 2.

⁶ *Karamera* Decision, para. 3 (citing *Prosecutor v. Pauline Nyiramasuhuko and Arsene Shalom Ntahobali*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsene Shalom Ntahobali on the “Decision on Defence urgent Motion to Declare Part of the Evidence of Witnesses RV and ABZ Inadmissible” (AC), July 2004).

⁷ *Karamera* Decision, para. 3 (citing *Karamera et al.*, Case No. ICTR-94-44, Decision on the Prosecution Motion for Admission into Evidence of Post Arrest Interviews (TC)); *Bizimungu* Decision, para. 14; *Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC) 4 October 2004 para. 7; *Kordic* Decision, para. 24. In *Kordic*, the Appeals Chamber considered whether the unsworn, out-of-court statement of a deceased witness which had not been subjected to cross-examination should have been admitted into evidence as the only proof that the accused was at a particular place at a certain time. The Chamber held that the evidence was inadmissible because it was not sufficiently reliable.

Relevance of the Proposed Evidence

Motion of 7 May 2008

11. The Chamber has not been provided with any details with respect to the name of the witness whose testimony the Defence seeks to impeach, nor has the Chamber been provided with the date on which any such person testified. Moreover, the Defence has not given a sufficient explanation of how the documents in question relate to one or more acts with which the Accused has been charged in the Indictment.
12. The Chamber therefore finds that the Defence has not established, *prima facie*, that the documents it seeks to admit are relevant.

Motion of 20 May 2008

13. The Defence submits that the Church records are relevant because they confirm testimony that Henrietta Uwamariya was the subject of a baptism on 3 April 1994.
14. The Chamber is not satisfied that the Defence has demonstrated, *prima facie*, that the documents are relevant. It has not been established that there is any connection between the baptism of Henrietta Uwamariya and one or more of the charges against Mr. Mugiraneza in the Indictment.

Conclusion

15. There is no need to consider the probative value of the documents sought to be admitted since the Defence has failed to make a *prima facie* showing of relevance.
16. It is the responsibility of the moving party to provide the Chamber with the relevant information needed to make a reasoned decision. The Chamber is not prepared to speculate as to which witnesses and whose testimony the Motions pertain, nor to consult the entire Prosecution trial record to this end.⁸

⁸ See *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, paras. 7-8. (stating that “the purpose of the standards set forth in Rule 89 (C) is to ensure that the Chamber is not burdened by evidence for which no reasonable showing of relevance or probative value has been made” and discussing the obligation of the moving party to explain what the evidence is and demonstrate its reliability). See also *Prosecutor v. Prlic et al.*, Case No. IT-04-74-T, Decision on Admission of Documentary Evidence Relating to Prozor Municipality (TC), 20 February 2007, para. 6 (referring to that Chamber’s adopted Guidelines on the Admission of Evidence and pointing out that a motion for the admission of documentary evidence may be denied if the moving party does not, among other things, describe the document, identify the source of the document and its reliability, refer to the relevant paragraphs of the Indictment and witnesses who have testified before the Chamber dealing with the same paragraphs of the Indictment). Though these steps are not necessary here, the moving party must make some effort to demonstrate that the documents in question meet the minimum threshold for admission.

FOR THESE REASONS the Chamber

DENIES the Defence Motions dated 7 and 20 May 2008 in their entirety.

Arusha, 2 June 2008

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

Emile Francis Short
Judge

[Seal of the Tribunal]