



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:** Mr. Adama Dieng

**Date:** 10 June 2008

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

**Case No. ICTR-99-50-T**

**DECISION ON JEROME BICAMUMPAKA'S CONFIDENTIAL AND AMENDED  
MOTION TO ADMIT RWANDAN JUDICIAL RECORDS INTO EVIDENCE**

*Rule 89 (C) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Mr. Paul Ng'arua  
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Mr. Elvis Bazawule  
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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**

## INTRODUCTION

1. On 1 May 2008, the Defence for Jérôme-Clément Bicamumpaka (“Defence”) filed a Motion seeking to admit a copy of a Rwandan judicial record into evidence.<sup>1</sup> A corrigendum to the Motion was filed on 23 May 2008.<sup>2</sup>
2. The Defence seeks to admit the record for the purpose of bolstering the credibility of Witness VF-1. The Defence submits that the Prosecution has sought to impeach the credibility of the Witness on the basis that the Witness was imprisoned in Rwanda.
3. The Prosecutor objects to the admission of the document on various grounds, largely arising from the Prosecution position that the document is dated 22 November 2002 and should have been introduced into evidence when Witness VF-1 testified before the Chamber on 18 October 2007.<sup>3</sup>

## DISCUSSION

4. Rule 89 (C) of the Rules of Procedure and Evidence (“Rules”) provides that a “Chamber may admit any relevant evidence which it deems to have probative value.” The Chamber therefore has a broad discretion to admit any evidence which it deems to be relevant and of probative value.<sup>4</sup> For the purpose of admission pursuant to Rule 89 (C), a document will be considered relevant if it can be established that there is a connection between the evidence and one or more allegations against the Accused in the Indictment.<sup>5</sup> In order to

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<sup>1</sup>*Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-T, Jerome Bicamumpaka’s Confidential Motion to Admit Rwandan Judicial Records into Evidence, filed on 21 May 2008.

<sup>2</sup>*Bizimungu et al.*, Corrigendum to Jerome Bicamumpaka’s Confidential and Amended Motion to Admit Rwandan Judicial Records into Evidence, filed on 23 May 2008. The Corrigendum replaced “LF-1” with “VF-1” in paragraphs 1 and 7 of the original Motion.

<sup>3</sup>*Bizimungu et al.*, Prosecutor’s Response to Jerome Bicamumpaka’s Confidential Motion to Admit a Rwandan Judicial Record into Evidence, filed on 27 May 2008. The Prosecutor further submits at paragraphs 4-6 that the Defence “should have attached the Judgement in the case of Witness VF-1 whose acquittal [it] seeks to establish with the documents.” Moreover, the Prosecutor argues that the document is a release from prison, signed by the Director of Gitarama prison, and does not support the assertion that Witness VF-1 was acquitted by the *Gacaca* court. Finally, the Prosecutor submits at paragraph 6 that the document “on its face does not exculpate Witness VF-1 from crimes he might have been charged with before the *Gacaca* court in Rwanda.” The lack of information about the crimes for which Witness VF-1 was charged, the Prosecutor submits, militate against its admission.

<sup>4</sup>*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 Karemera 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 “*Karemera* Decision”), para. 3.

<sup>5</sup>*Karemera* 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).

have probative value, evidence must tend to prove or disprove an issue, and it must be sufficiently reliable.<sup>6</sup>

5. The onus is on the moving party to demonstrate that the evidence which it seeks to admit is, *prima facie*, relevant and probative.<sup>7</sup>

*Is the Document Relevant and Probative?*

6. The judicial record, entitled “*Billet D’Elargissement*,”<sup>8</sup> appears to be from the Ministry of Interior Security, Central Prison of Gitamara, and has pre-existing printed sections, along with handwritten responses. It contains the name of an individual, and other personal information. According to the document, this person was “*condamné par le Tribunal de Gacaca*.” The next line reads “*En date du...[what appears to be 6 November 2002 or 2007] a été élargi après avoir subi sa peine de servitudes principales de... acquitt...*”<sup>9</sup> The remainder of this final word is not clearly legible because it is covered by a stamp. The document bears what appears to be a stamp from the Gitarama Prison, and it appears to have been signed at a location called Muhanga by the Director of the Gitarama Prison.

7. The document suggests that Witness VF-1 participated in proceedings before the *Gacaca* Tribunal and was acquitted or released from the Gitarama Prison. The Defence explains the record as stating that the person named therein, Witness VF-1, could “return to his home after having received a ‘sentence’ of acquittal by the *Gacaca* Court”.<sup>10</sup>

8. The Chamber finds that the record has sufficient *indicia* of reliability. It appears to be a formal document from the Prison of Gitamara and appears to bear a stamp from that prison.

9. The Chamber notes that the date of the “acquittal” is not entirely clear on the copy of the record, and that the record contains no information about the offence or offences with which Witness VF-1 was charged and to which the document pertains. However, these are factors for the Chamber to consider when assessing the weight to be attached to the evidence after hearing the totality of the evidence.<sup>11</sup>

10. The Defence submits that Witness VF-1 contradicts the testimony of two Prosecution witnesses - GHU and GHR - who testified about events related to the crimes with which Mr. Bicomupaka has been charged. The record for which admission is sought relates to the credibility of Witness VF-1.

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<sup>6</sup> *Karempera a* Decision, para. 3 (citing *Karempera 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.

<sup>7</sup> *Bizimungu* Decision, paras. 14-15; the *Karempera* 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.

<sup>8</sup> The equivalent in English would be a Release Ticket.

<sup>9</sup> The word is not clear but it appears to be “*acquittement*”.

<sup>10</sup> *Bizimungu et al.*, Defence Reply to Prosecutor’s Response to Jerome Bicomupaka’s Confidential Motion to Admit a Rwandan Judicial Record into Evidence, filed on 28 May 2008.

<sup>11</sup> *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.

11. To the extent that the record relates to the credibility of Witness VF-1, the Chamber is satisfied that it is relevant and has probative value.<sup>12</sup>

**FOR THESE REASONS**, the Chamber

**GRANTS** the Defence Motion; and hereby

**ADMITS** the document annexed to the Defence Motion into evidence, pursuant to Rule 89 (C) of the Rules, as a confidential exhibit under seal; and

**DIRECTS** the Registry to assign the document an exhibit number; and

**DIRECTS** the Defence to file the original version of the document if it is in its possession.

Arusha, 10 June 2008

Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

Emile Francis Short  
Judge

[Seal of the Tribunal]

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<sup>12</sup> It has been held that information related to the testimony or credibility of a witness should, in principle, be treated as relevant and probative. See *Prosecutor v. Kvočka et al*, Case No. IT-98-30/1, Decision on Defence Motion to Introduce Exhibit Evidence, 17 April 2001.