



ICTR-99-50-T
23-07-2008
(28105-28102)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before Judges:	Khalida Rachid Khan, presiding	
	Lee Gacuiga Muthoga	
	Emile Francis Short	
Registrar:	Mr. Adama Dieng	
Date:	23 July 2008	

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

Case No. ICTR-99-50-T

DECISION ON PROSPER MUGIRANEZA'S MOTION TO ADMIT PORTIONS OF
THE DEPOSITION OF WITNESS RDG

Rules 71 and 89 (C) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyam Lal Rajapaksa
Mr. Olivier De Schutter
Ms. Ndeye Marie Ka

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JUDICIAL RECORDS/ARCHIVES
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M. Opatovitch

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Andrea Valdivia 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. In January 2008, this Chamber ordered that a deposition of the testimony of Defence Witness RDG be taken for use in the *Casimir Bizimungu et al.* trial, since the Witness was too ill to travel to Arusha to testify.¹ A Presiding Officer was appointed for this purpose, and the deposition was duly conducted in Rwanda on 31 January and 1 February 2008. On 14 February 2008, the Presiding Officer delivered transcripts of the deposition, along with audio-visual recordings, and exhibits which had been sought to be tendered during the course of the deposition, into the Chamber's custody. Furthermore, the Presiding Officer did not rule on objections taken by the Parties during the course of the deposition.

2. The Mugiraneza Defence now requests the Chamber to admit the transcripts, audio-visual recordings, and exhibits tendered during the deposition into evidence.²

3. The Prosecutor requests that the Chamber admit the entirety of the deposition, as well as all of the exhibits, except for evidence excluded through any sustained objection.³

DISCUSSION

4. Under Rule 89 (C), the Chamber has 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

5. 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 The requirements for reliability are low at the initial stage of admissibility and the moving party need only demonstrate "the beginning of proof that evidence is reliable."⁸

¹ See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Extremely Urgent Decision Reconsidering Trial Chamber's Decision of 24 January 2008 and Order for the Testimony of Witness RDG to be taken by Deposition, 29 January 2008.

² *Bizimungu et al.*, "Prosper Mugiraneza's Motion to Admit Portions of Deposition of Witness RDG", filed on 8 July 2008, ("Motion"). The Motion is brought pursuant to Rule 89 (C) of the Rules of Procedure and Evidence, which provides for the admission of any evidence which is relevant and probative. The Defence seeks the admission of the transcript of the deposition, with the exception of page 31, line 1 through 32, from the proceedings on 1 February 2008. The Motion actually requests that page 31 from "the portion of the deposition taken on 2 February 2008" be excluded (see Motion, para. 2). Since no deposition proceedings occurred on 2 February 2008, the Chamber is proceeding on the assumption that the Defence was, in fact, referring to the transcript of 1 February 2008.

³ *Bizimungu et al.*, "Prosecutor's Response to Prosper Mugiraneza's Motion to Admit Portions of Deposition of Witness RDG," filed on 14 July 2008, ("Response").

⁴ *Bizimungu et al.*, Decision on Defence Motions to Admit Church Records and School Records, (Rule 89 (C)) (TC), 2 June 2008 ("*Bizimungu Decision*"), para. 9, (citations omitted).

⁵ *Bizimungu Decision*, para. 9.

⁶ *Id.*, para.10.

⁷ *Id.*, para.10.

⁸ *Pauline Nyiramasuhuko v. Prosecutor*, Case No. ICTR-96-15-I, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence, 4 October 2004, para. 7.



Is the Transcript Relevant and Probative?

6. The Chamber notes that it has already determined that the testimony to be given by Witness RDG is "important to Mugiraneza's defence."⁹ The Chamber has reviewed the contents of the transcripts of the deposition, and is equally satisfied as to their relevancy to this case.

7. The Chamber has reviewed the official transcripts and is also satisfied that they possess sufficient *indicia* of reliability to be probative. The official audio and video records are also sufficiently reliable. The Chamber notes that Ms. Cline, Co-Counsel for Prosper Mugiraneza,¹⁰ examined the Witness in-chief, and he was cross-examined by Mr. Gumpert, Lead Counsel for Justin Mugenzi, as well as by Mr. Babajide, from the Office of the Prosecutor.

8. The Chamber will now turn to consider the objections raised by the Parties during the course of the deposition.

9. First, and with respect to the Defence submission to exclude page 31, lines 1 to 32, of the portion of the deposition taken on 2 (*sic*) February 2008, the Chamber notes that the Defence gives no reason for its request to exclude this page. Furthermore, the Chamber sees no reason to support this request. The Chamber therefore denies this particular request.

10. Second, the Defence raised a number of objections to questions from the Prosecution, on the following grounds: (i) that the question asked exceeded the scope of the examination-in-chief;¹¹ (ii) that the question was based on hearsay;¹² (iii) that the question amounted to a "fishing expedition";¹³ or (iv) that the fact was not in evidence.¹⁴

11. The Chamber has reviewed all of the instances in which objections were raised by Ms. Cline, and considers that none of those instances warrants the upholding of an objection. None of the questions asked inappropriately exceeded the scope of the Witness' evidence-in-chief. Furthermore, the Chamber notes that it is well-established in the jurisprudence of this Tribunal that hearsay evidence is admissible and that the question which falls to be determined by the Chamber is one of weight, rather than of admissibility.¹⁵ The Chamber therefore rejects all of the objections raised by the Defence.

⁹ *Bizimungu et al.*, Urgent Decision On Prosper Mugiraneza's Motion For The Testimony Of Witness RDG To be taken by Deposition and Chamber's Order For Video-Link Testimony, 24 January 2008, para. 12 and footnote 14.

¹⁰ NB: At the time of the taking of this deposition, Ms. Cline was Prosper Mugiraneza's Legal Assistant.

¹¹ Ms. Cline raised this objection on seventeen separate occasions – see T. 1 February 2008, pp. 35 (1 objection), 36 (2 objections), 37 (2 objections), 38 (1 objection), 41 (3 objections), 42 (4 objections), 43 (1 objection), 44 (1 objection), 45 (2 objections). The third time she raised this objection, she said that she would like to enter what was known as a "running objection" to anything exceeding the scope of what was asked in examination-in-chief. In the Motion, the Defence states it would like to withdraw three such objections.

¹² Ms. Cline raised this objection on 3 separate occasions – see T. 1 February 2008 pp. 39, 44, and 46.

¹³ Ms. Cline raised this objection once – see T. 1 February 2008 p. 46.

¹⁴ Ms. Cline raised this objection once – see T. 1 February 2008 p. 46.

¹⁵ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment (AC), 1 June 2001, paras. 286, 292. See also *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1, Decision On Prosecutor's Appeal On Admissibility Of Evidence, 16 February 1999, para. 15, "It is well settled in the practice of the Tribunal that hearsay evidence is admissible."



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12. Third, the Prosecution raised one objection on the ground that the question asked was inviting the Witness to speculate.¹⁶ The Chamber has reviewed the context in which this objection was raised and notes that the Witness answered the question prior to the Prosecution raising the objection. There is therefore no basis upon which to uphold the objection.

13. The Chamber is satisfied that the transcripts of 31 January and 1 February 2008, and the accompanying audio and video recordings, are relevant and have probative value, and should therefore be admitted in their entirety.

Are the Exhibits Relevant and Probative?

14. Four exhibits were sought to be introduced during the course of the deposition. They were: (i) the Witness' Protected Information Sheet; (ii) a Written Statement made by the Witness on 30 January 2008; (iii) a Written Statement made by the Witness on 17 November 1999; and (iv) a series of six (6) photographs (A-F) shown to the Witness for identification purposes.¹⁷

15. The Chamber has considered all of these exhibits in the context of the testimony of Witness RDG, and is satisfied that they are all reliable and probative. Considering the contents of the exhibits, the Chamber further considers that they should be admitted under seal.

FOR THE ABOVE REASONS, THE CHAMBER

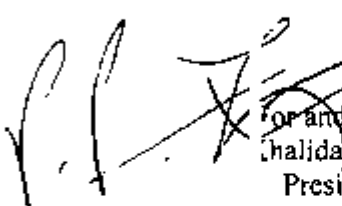
GRANTS the Defence Motion, in part; and


ADMITS into evidence the transcripts and video and audio recordings of, and exhibits tendered during, the deposition taken from Witness RDG on 31 January 2008 and 1 February 2008 in their entirety; and

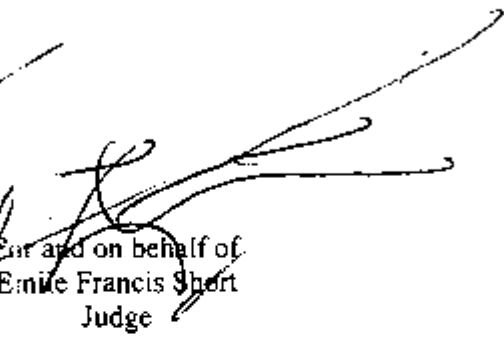
DIRECTS the Registry to assign exhibit numbers to the aforementioned documents, as a matter of priority; and

DENIES the remainder of the Defence Motion.

Arusha, 23 July 2008


For and on behalf of
Halida Rachid Khan
Presiding Judge


The Gaciga Muzoga
ICTR Judge


For and on behalf of
Emile Francis Short
Judge



¹⁶ T. February 2008 p. 4.

¹⁷ The Witness was asked to name any person that he recognized from the photographs. He identified photograph F as "Mugiraneza." See Deposition of Witness RDG, T. 1 February 2008, p.38.