



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

28101  
na

UNITED NATIONS  
NATIONS UNIES

TRIAL CHAMBER II

OR: ENG

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

ICTR-99-50-T  
23-07-2008  
(28101-28095)

**Registrar:** Adama Dieng

**Date:** 23 July 2008

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

Case No. ICTR-99-50-T

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**DECISION ON DEFENCE MOTION TO RECONSIDER ORDER OF 2 JUNE  
2008 DENYING ADMISSION OF CHURCH AND SCHOOL RECORDS**

***Office of the Prosecutor:***

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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 2 June 2008, the Chamber issued a Decision denying the admission of two Defence Motions seeking to have certain documents admitted into evidence.<sup>1</sup>
2. By Motion filed on 12 June 2008, the Defence for Mugiraneza ("Defence") requests that the Chamber reconsider its Decision of 2 June 2008.<sup>2</sup> The Chamber's Decision of 2 June 2008 addressed two Defence Motions seeking to admit school records and a church record, filed on 7 and 20 May, respectively.<sup>3</sup> The Chamber denied both Motions because the Defence did not discharge its burden of establishing that the documents were, *prima facie*, relevant and probative.<sup>4</sup> The Defence has now provided additional information and asks the Chamber to reconsider its Decision.
3. The Prosecutor objects to the Motion for Reconsideration on the basis that the legal threshold for reconsideration is not met.<sup>5</sup>

## DISCUSSION

### *Law on Reconsideration*

4. Though reconsideration is not expressly provided for in the Statute or the Rules, the Trial Chamber has an inherent power to reverse or revise a prior decision where new material circumstances have arisen that did not exist at the time of the original decision, or where the decision was erroneous and has caused prejudice or injustice to a party.<sup>6</sup>

<sup>1</sup> *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Defence Motions to Admit Church and School Records Pursuant to Rule 89 (C), 2 June 2008 ("Impugned Decision").

<sup>2</sup> *Bizimungu et al.*, "Prosper Mugiraneza's Motion to Reconsider Order of 2 June 2008 Denying Admission of Church and School Records," filed on 12 June 2008 ("Motion for Reconsideration").

<sup>3</sup> *Bizimungu et al.*, "Prosper Mugiraneza's Motion to Admit Documents Pursuant to Rule 89 (C)," filed on 7 May 2008; *Bizimungu et al.*, "Prosper Mugiraneza's Motion to Admit Church Records Pursuant to Rule 89 (C)," filed on 20 May 2008 ("Motion to Admit Church Record").

<sup>4</sup> Impugned Decision.

<sup>5</sup> *Bizimungu et al.*, "Prosecutor's Response to Mr. Prosper Mugiraneza's Motion for the Reconsideration of Trial Chamber II Decision of 2 June 2008 Denying the Admission of Church and School Records," filed on 16 June 2008, p. 2. See also *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. (In its response to the Motions of 7 and 20 May, the Prosecutor did not oppose the admission of the records but requested 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.")

<sup>6</sup> *Bizimungu et al.*, Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 6; *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera et al.*, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure, 31 October 2005, para. 3; *Karemera et al.*,



Further, it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.<sup>7</sup>

*Whether the Chamber's 2 June Decision Warrants Reconsideration*

5. In the Impugned Decision, the Chamber denied the admission of the school records because the Defence failed to discharge its burden of demonstrating that the documents for which admission was sought were, *prima facie*, relevant and probative.<sup>8</sup>

6. With respect to the school records, the Chamber was not provided with any information about the witness whom the Defence sought to impeach with the records, nor with a sufficient explanation of how the records were relevant to one or more of the charges against the Accused in the Indictment. Similarly, the Defence sought to admit a church record, but did not show any connection between the church record, and the crimes with which the Accused has been charged. The party moving for the admission of the documents bears the burden of demonstrating that the records are relevant and probative.<sup>9</sup> The Chamber is satisfied that the Impugned Decision was not erroneous in law.

7. In the Motion for Reconsideration, the Defence provided the Chamber with information, which it had not provided previously, in order for the Chamber to reach a reasoned decision. However, the information was known to the Defence at the time of the Impugned Decision, and does not amount to the discovery of a new fact or a material change in circumstances which did not exist at the time the original decision was rendered.

8. As there was no error of law resulting in a miscarriage of justice, and since there has been no new discovery of fact, or material change in circumstances that did not exist at the time of the filing of the original motion, the Chamber concludes that the test for reconsideration has not been met. The Chamber will proceed to consider whether there are other reasons to revisit the evidence for which admission is sought.

*Whether the Chamber Can Re-assess the Evidence in Light of the New Information Provided – Issue Estoppel and the Fair Trial Rights of the Accused*

9. The Chamber considers that assessing the evidence again in light of the new material before it, may raise the question of issue estoppel. The principle of issue estoppel provides that, once a matter has already been heard and decided upon by a trier

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Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

<sup>7</sup> See *Prosecutor v. Nzirorera et al.*, Case No. ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, 10 October 2003, para 6.

<sup>8</sup> Impugned Decision.

<sup>9</sup> *Ibid.*



of fact, the same matter cannot be re-litigated.<sup>10</sup> Since the Defence is asking the Chamber to decide *de novo* upon its original application for the admission of the records on the basis of the new material which is now placed before it, this matter might be considered to be estopped from re-litigation.

10. However, the Defence submits that the minimum guarantees afforded to the Accused may be violated if the Chamber does not consider the evidence. In particular, the Defence submits that the Accused will have been deprived of his right to effective assistance of counsel – a right guaranteed by Article 20 (4) (d) of the Statute - because “counsel should have included more detail to show why the documents were relevant.”<sup>11</sup>

11. Given that Counsel for Mugiraneza failed to provide the information required in order to show the relevance of the documents for which admission was sought, the Chamber considers it should revisit the evidence *de novo*. Further, in light of the additional material provided, it is in the interests of fairness that the evidence be considered *de novo*. Not to do so, would be to penalise the Accused for the oversight of his counsel.

12. Therefore, in the interests of justice, and in light of the new information provided, the Chamber is willing to consider the evidence afresh. The Chamber will now assess whether the requirements for admission pursuant to Rule 89 (C) are met.

#### *Law on the Admission of Evidence*

13. Under Rule 89 (C), the Chamber has a broad discretion to admit any evidence which it deems to be relevant and of probative value.<sup>12</sup> 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.<sup>13</sup>

14. 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

<sup>10</sup> Issue estoppel, or *res judicata*, has been considered and applied by this Tribunal. See, for example, *Bizimungu et al.*, Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of His Right to Trial Without Undue Delay, 29 May 2007, para. 6

<sup>11</sup> Motion for Reconsideration, para. 10.

<sup>12</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; *Karamera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira (TC), 26 March, 2008 (the “*Karamera Decision*”), para. 3.

<sup>13</sup> *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.

sufficiently pleaded in the indictment.<sup>14</sup> Evidence tendered before the Chamber has probative value if it tends to prove, or disprove an issue, and has sufficient *indicia* of reliability.<sup>15</sup>

*Whether the Evidence is Admissible Pursuant to Rule 89 (C)*

*i. School Records*

15. The Defence submits, in the Motion for Reconsideration, that the records are relevant and probative because they impeach Prosecution Witness Fidele Uwizeye, who testified that Prosper Mugiraneza was present during an attack on the school.<sup>16</sup>

16. The copies of the records which the Defence seeks to admit are lists which can be 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. They appear to be official records relating to the St. Bernadette's School. Most of the records have printed in the top corner, either "*Republique Rwandaise Ministere De L'enseignement Primaire et Secondaire*" or "*Ecole Sainte Bernadette de Kamonyi*". Most of the documents also bear a stamp which reads, "*Republique Rwandaise, Diocese de Kabgayi, Enseignement Secondaire Prive, Ecole Ste Bernadette, Kamonyi,*" and a stamp with what appears to be a Latin phrase and a logo or insignia of some kind. It appears that most of the documents are also signed.<sup>17</sup> The Chamber finds that the records are sufficiently reliable.

17. The Chamber is satisfied that the records are relevant and probative because they relate to the credibility of Prosecution Witness Fidele Uwizeye, who testified about an alleged attack at which he says the Accused was present.

*ii. Church Record*

18. In the Motion for Reconsideration, the Defence submits that the document is relevant and probative because it supports Mr. Mugiraneza's alibi defence and his assertion that he was away from Kigarama Commune on the afternoon and evening of 3 April 1994.<sup>18</sup>

<sup>14</sup> *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).

<sup>15</sup> *Kurameru* 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.

<sup>16</sup> Motion for Reconsideration, para. 3.

<sup>17</sup> See Motion for Reconsideration, at paragraph 5. (The Defence says that the records have been signed by a bishop).

<sup>18</sup> *Ibid.*, para. 8.



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19. The Defence seeks to admit a copy of a record which purports to be from the Diocese of Kibungo. The Defence identifies this 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."<sup>19</sup>

20. 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. The Chamber finds that the record has sufficient *indicia* of reliability.

21. Mrs. Mugiraneza, the wife of Prosper Mugiraneza, testified on 1 May 2008 that on Sunday, 3 April 2008, her brother's child, Harriet Uwamariya (then about 15 or 16 years old) was baptised. Mrs. Mugiraneza testified that she and her husband went to the home of her brother, where they took part in a baptism ceremony for Harriet and stayed there until approximately 8 p.m. at which point they went to her parents' home.<sup>20</sup> Witness RWW testified in closed session on 13 March 2008 that Mr. Mugiraneza went to the home of his brother in law to celebrate the christening and first communion of his brother in law's children and stayed there until approximately 8 p.m., at which point he returned to the home of his wife's parents.<sup>21</sup>

22. The Chamber is satisfied that the record is relevant and probative because it relates to Mr. Mugiraneza's alibi defence.

### CONCLUSION

23. In light of the fair trial rights of the Accused as found in Articles 19 and 20 of the Statute, and the additional information provided by the Defence in the Motion for Reconsideration, the Chamber concludes that it is in the interests of justice to assess whether the church record and the school records should be admitted into evidence. The Chamber is satisfied that the evidence, for which admission is sought, is relevant and probative for the purposes of admission pursuant to Rule 89 (C) of the Rules.

<sup>19</sup> Motion to Admit Church Record.

<sup>20</sup> T. 1 May 2008, pp. 8-9

<sup>21</sup> T. 13 March 2008, Closed Session, p.10

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**FOR THESE REASONS** the Chamber

**DENIES** the Defence request to reconsider its Decision of 2 June 2008; and

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**NOTING** the minimum guarantees afforded to the Accused by Articles 19 and 20 of the Statute, hereby

**ADMITS** the records annexed to the Defence Motions dated 7 May 2008 and 20 May 2008 into evidence pursuant to Rule 89 (C) of the Rules; and

**DIRECTS** the Registry to assign appropriate exhibit numbers to the documents.

Arusha, 23 July 2008

For and on behalf of  
Khalida Rashid Khan  
Presiding Judge

Lee Gatwiga Muthoga  
Judge

For and on behalf of  
Emile Francis Short  
Judge

[Seal of the Tribunal]

