



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

16 IR-02 69-T
15-09-2008
(3015 - 3013)

3015
S. Muna

ORIGINAL: ENGLISH

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 15 September 2008

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THE PROSECUTOR

v.

Hormisdas NSENGIMANA

Case No. ICTR-2001-69-T

DECISION ON ADMISSION OF WRITTEN STATEMENTS

The Prosecution
Wallace Kapaya
Sylver Ntukamazina
Charity Kagwi-Ndungu
Brian Wallace
Iskandar Ismail
Jane Mukangira

The Defence
Emmanuel Altit
David Hooper

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

30/4

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

BEING SEIZED OF two Defence Motions to admit written statements by Bishop Lambert van Heijgen and Witness LFR68, filed on 30 June and 9 July 2008, respectively;

CONSIDERING the Prosecution Response to the first Motion, filed on 4 July 2008;

HEREBY DECIDES the Motion.

INTRODUCTION

1. The Defence closed its case on 11 July 2008, subject to certain pending matters. Its first Motion requests the admission of a written statement by Bishop Lambert van Heijgen, concerning Hormisdas Nsengimana's stay in Cameroon from 1995.¹ The Prosecution submits that the statement is inadmissible because it concerns the acts and conduct of the Accused, and that there is insufficient proof that its author is deceased.² In its second Motion, the Defence seeks to tender as an exhibit the written statement of Witness LFR68, which primarily relates to whether Nsengimana was involved in the killing of Dr. Galican.³ The Prosecution has not filed any response.

DELIBERATIONS

(i) *The Law*

2. According to Rule 92 *bis* (A) of the Rules of Procedure and Evidence, a Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony provided that it concerns "proof of a matter other than the acts and conduct of the accused as charged in the indictment". Statements sought to be admitted under that provision must comply with the requirements of relevance and probative value required by Rule 89 (C). Furthermore, the Chamber must exercise its discretion, in accordance with the criteria set out in Rule 92 *bis* (A)(i) and (ii), to determine whether the statement should be admitted. Rule 92 *bis* (B) sets forth technical formalities that must be complied with for a statement to be admissible, whereas Rule 92 *bis* (C) contains less stringent requirements when a person is deceased.⁴

(ii) *Statement of Bishop van Heijgen*

3. The statement of Bishop van Heijgen, who worked in Cameroon for many years, is not accompanied by a written declaration about its truthfulness in accordance with Rule 92

¹ "Requête de la Défense aux fins de faire admettre une déclaration écrite" etc. (Defence first Motion), 30 June 2008, paras. 6-12, with Annexes.

² Prosecution Response, paras. 7-13.

³ "Requête de la Défense aux fins de faire admettre une déclaration écrite" etc. (Defence second Motion), 9 July 2008, paras. 5-10.

⁴ *Bagosora*, Decision on Nsengiyumva Motion to Admit Documents as Exhibits (TC), 26 February 2007, paras. 3-5; Decision on Defence Motion for Admission of Statement of Witness LG-1/U-03 under Rule 92 *bis* (TC), 11 December 2006, para. 3. Both decisions contain further references.

6/10

bis (B). However, Rule 92 *bis* (C) permit the admission of a statement given by a person who is deceased. Although the Defence has not produced a death certificate, the Chamber finds that the attestation by a vicar at the bishopric in Cameroon, with attached gravestone photographs, is sufficient to show, on the balance of probabilities, that the bishop is deceased.⁵ Furthermore, in view of the circumstances in which the statement was made and recorded, the Chamber considers that there are satisfactory indicia of its reliability. The statement was witnessed by a member of the Defence legal team and to some extent is corroborated by annexes.⁶

4. According to the statement, Nsengimana was helpful, open-minded, did not show prejudice, and was not involved in politics during his stay in Cameroon from 1995 onwards. Such evidence is distant to the 1994 events in Nyanza and does not go to his acts and conduct. Rule 92 *bis* (A)(i)(e) lists circumstances relating to the character of an accused as one of the factors which favours admission.⁷ The Chamber admits the statement for the purpose of describing Nsengimana's stay in Cameroon.

(iii) *Statement of Witness LFR68*

5. The statement of Witness LFR68 primarily relates to the killing of Dr. Galican and his children in early May 1994. This event is explicitly mentioned in para. 35 of the Indictment and forms the basis of the charges of genocide, murder as a crime against humanity, and extermination. According to the witness, Nsengimana was not in any way involved in the killing. The Chamber finds it clear that the statement goes to the acts and conduct of the Accused and is not admissible under Rule 92 *bis*.⁸ The second Motion is therefore denied.

FOR THE ABOVE REASONS, THE CHAMBER


GRANTS the Motion relating to the statement of Bishop Lambert van Heijgen for the purpose of describing Hormisdas Nsengimana's stay in Cameroon.

DENIES the Motion relating to the statement of Witness LFR68.

Arusha, 15 September 2008


Erik Mose
Presiding Judge


Sergei Aleksandrovich Egorov
Judge



Florence Rita Arrey
Judge

⁵ Defence first Motion, Annex II (Statement of Father Bernard Gros with attached photographs).

⁶ Defence first Motion, Annex I (photocopy of Bishop van Heijgen's passport with his signature) and Annex III (Agreement of 28 August 1997 between Bishop Philippe Rukamba, Archbishop Lambert van Heijgen and Father Hormisdas Nsengimana).

⁷ See, for instance, *Bagosora et al.*, Decision on Defence Motion for Admission of Statement of Witness LG-1/U-03 under Rule 92 *bis* (TC), 11 December 2006, para. 8; *Serugendo*, Decision on Defence Motion for the Admission of Written Witness Statements Under Rule 92 *bis* (TC), 1 June 2006, paras. 1-6.

⁸ Witness LFR68's statement (Defence second Motion Annex I) contains a sentence to the effect that she never saw Nsengimana organising the cutting of bushes surrounding the college. This also relates to his acts and conduct, as it is the Prosecution case that he did so in order to prevent Tutsis from hiding there.