



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: 26 September 2008

THE PROSECUTOR

v.

**CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA**

Case No. ICTR-99-50-T

**DECISION ON DEFENCE MOTIONS FOR THE ADMISSION OF TESTIMONY GIVEN
BY PROSECUTION WITNESS GFA BEFORE THE *KAREMERA ET AL* CHAMBER**

Rules 92 bis (D) and 89 (C) of the Rules of Procedure and Evidence

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Mr. Michel Croteau and Mr. Philippe Larochelle for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

INTRODUCTION

1. Prosecution Witness GFA testified before this Chamber from 11 to 13 October 2004. The Witness also testified for the Prosecution in the *Karemera et al.* case from 8 to 20 June 2006 and again from 10 to 17 April 2008, as Prosecution Witness BTH.
2. In late 2007, the Defence for Jérôme-Clément Bicamumpaka brought a motion before this Chamber, seeking permission to meet with and to interview GFA, on the basis of information it had received that GFA may wish to recant his testimony. The Chamber granted the motion.¹ Following that interview, and on the basis of further material presented before the Chamber, the Chamber ordered the recall of GFA for further cross-examination on the issue of his false testimony.²
3. In March 2008, the *Karemera et al.* Chamber issued a similar order for the further cross-examination of the same witness on the issue of his false testimony.³ Pursuant to that order, the Witness gave further testimony before the *Karemera et al.* Chamber. He testified over several days.⁴ In that testimony, GFA asserted that he lied before the Tribunal, and he specifically indicated that he gave false testimony before this Chamber in the present case.⁵
4. Both the *Karemera et al.* Chamber, and this Chamber, have ordered independent investigations into the alleged false testimony of this Witness; an independent *amicus curiae*, appointed by the Registrar, will conduct the investigations.⁶
5. Witness GFA appeared before this Chamber on 28 and 30 April, and 5 May 2008, pursuant to the Chamber's Recall Decision. The Chamber asked the Witness several times to

¹ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Jérôme-Clément Bicamumpaka's Motion to Meet with Prosecution Witnesses GFA and GKB (Meet With GFA Decision), 5 December 2007.

² *Bizimungu et al.*, Decision on Jérôme-Clément Bicamumpaka's Motion Requesting a Recall of Prosecution Witness GFA; Disclosure of Exculpatory Materials; and to Meet with Witnesses GFA (Recall Decision), 21 April 2008.

³ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH, 12 March 2008.

⁴ *See, Karemera et al.*, T. 10-17 April 2008.

⁵ The bulk of GFA's testimony describes what he says are lies he has told and been instructed to tell before the Tribunal and he indicates that he lied before this Chamber on several occasions. For example, *Karemera et al.*, T. 16 April 2008, pp. 13-14. GFA says, "I simply wanted the Judges to understand that during my first testimony, I told lies"; T. 16 April 2008, p. 27. GFA says, "My conscience requested of me that I come back on what I said because I did not want to carry on living bearing the burden of having told a tissue of lies before this tribunal"; T. 17 April 2008, (In response to a Prosecutor's series of questions that began, "And you gave evidence on each of those four occasions that was critical to determining the guilt or the innocence of Joseph Nzirorera, Jérôme Bicamumpaka, Casimir Bizimungu, and General Augustin Bizimungu; that's right isn't it?") GFA says "All that I know is that I had given a false testimony which could cost the lives of some people. So I had to come back here in order to retract what I had said. And if there are people who must be held accountable for what had happened in Rwanda, then those people should be found accountable not on the basis of the testimony which I had given here. That is why I have come back here in the present trial, because initially people caused me to come here to tell lies, and this time around I have come here to counter those lies."

⁶ *See Bizimungu et al.*, Decision on Defence Motion Seeking the Appointment of *Amicus Curiae* to Investigate Possible False Testimony by Witnesses GFA, GAP and GKB (TC), 23 July 2008; *see also Karemera et al.*, Decision on Prosecutor's Confidential Motion to Investigate BTH for False Testimony (TC), 14 May 2008.

swear an oath prior to receiving further testimony from him, but he did not do so.⁷ On 6 May 2008, the Chamber requested that GFA be brought before it again in relation to his further testimony. However, it was advised by the Witnesses and Victims Support Section (“WVSS”) that the Witness had absconded.⁸

6. On 21 May 2008, the Chamber denied a request by Counsel for Justin Mugenzi either to issue a bench warrant for the arrest of GFA or, in the alternative, to hold GFA in contempt pursuant to Rule 77 of the Rules.⁹ The Chamber instead issued a subpoena compelling the attendance of GFA before it, and instructed the Registrar to execute the subpoena in liaison with the relevant State authorities.¹⁰

7. As Witness GFA has not testified further before this Chamber, to date, and his current whereabouts are unknown, the Defence for Justin Mugenzi moves the Chamber to admit portions of the testimony given by GFA in the *Karemera et al.* trial.¹¹ The Defence for Jérôme-Clément Bicamumpaka supports the Mugenzi Motion.¹²

8. The Prosecution opposes the Motion on a number of grounds.¹³ It submits that some portions of the transcripts go to the acts and conduct of the accused and are, therefore,

⁷ See, *Bizimungu et al.*, T. 5 May 2008, p. 54, ln. 9, requesting GFA to swear an oath; T. 5 May 2008, p. 58, ln. 3-4, GFA refuses to swear an oath; T. 30 April 2008, p. 21, ln. 28, requesting GFA to swear an oath; T. 29 April 2008, pp. 59-60, GFA requests time to decide if he will testify; the Chamber grants that request.

⁸ See, *Bizimungu et al.*, T. 6 May 2008, p. 35, 37-40.

⁹ T. 21 May 2008, pp. 28-30 (Oral Ruling). The Motion was generally supported by Mugenzi’s co-Accused, but was opposed by the Prosecutor.

¹⁰ *Id.*

¹¹ *Bizimungu et al.*, “Justin Mugenzi’s Motion for the Trial Chamber to Exercise Its Power to Admit the Transcripts of the Evidence Given in the Case of *Karemera et al* by the Witness Known in the Instant Proceedings as GFA,” filed 26 May 2008, (Motion). The Motion is brought pursuant to Rule 92 *bis* (D) and 89 (C) of the Rules of Procedure and Evidence. Rule 92 *bis* (D) empowers a Chamber to admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused. Rule 89 (C) empowers a Chamber to admit any relevant evidence which it deems to have probative value. The Motion requests that transcripts and exhibits relating to the testimony of the witness currently identified as GFA that were generated in *Karemera et al.*, from the 10th to 17th of April 2008 be admitted. The Defence attached copies of these transcripts and exhibits to the Motion. The Mugenzi Defence filing additional materials relating to this Motion on 29 August 2008, see “Justin Mugenzi’s Motion for the Chamber to Consider Further Material”. This Motion advised the *Bizimungu et al.* Trial Chamber that the *Karemera et al.* Trial Chamber had granted the Mugenzi Defence access to certain closed session materials relating to Witness BTH’s further testimony before it. The Motion also attached some 27 exhibits from the *Karemera et al* case to which Mugenzi had been granted access by virtue of that decision.

¹² *Bizimungu et al.*, “Motion of Bicamumpaka Asking the Chamber to Issue an Order in Lieu of an Indictment and Appoint an *Amicus Curiae* to Prosecute the Matter of the Perjuries of Witness GFA, GAP and GKB & Joinder to Justin Mugenzi’s Motion for the Trial Chamber to Exercise its Power to Admit the Transcripts of the Evidence Given in the Case of *Karemera et al.* by the Witness Known in the Instant Proceedings as GFA & Add Particular Conclusion to Bicamumpaka’s Case,” (Bicamumpaka Motion), filed 6 June 2008. The Defence for Bicamumpaka attached a copy of the Mugenzi Motion to its own Motion, but did not add any additional arguments to those raised by the Mugenzi Defence.

¹³ *Bizimungu et al.*, “Prosecutor’s Response to Justin Mugenzi’s Motion for the Trial Chamber to Exercise Its Power to Admit the Transcripts of the Evidence Given in the Case of *Karemera (sic) et al* by the Witness Known in the Instant Proceedings as GFA,” filed 5 May 2008, (Response), paras. 5-12. The Prosecution also replied to the Bicamumpaka Motion and opposes the Bicamumpaka Motion by adopting the arguments contained in the Response it made to Mugenzi’s Motion. See, “The Prosecutor’s Response to Jerome (*sic*) Bicamumpaka’s Motion Asking the

inadmissible under Rule 92 *bis* of the Rules.¹⁴ It also submits that, because of the nature of the testimony in the transcripts, the “public interest” requires the evidence only be admitted in the form of live testimony.¹⁵

DISCUSSION

Law on Admission of Transcripts as Evidence

9. Rule 92 *bis* (D) of the Rules bestows a discretionary power upon a Trial Chamber to “admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.”

10. The meaning of the term “acts and conduct of the accused as charged in the indictment” has been defined by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), which noted that the term is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused himself and not the acts and conduct of his co-perpetrators and/or subordinates.¹⁶ The purpose behind this restriction is to protect the right of the Accused to examine or have examined the witnesses against him.¹⁷

11. In order for a statement to be admissible under Rule 92 *bis*, the general requirements of relevance and probative value, applicable to all types of evidence under Rule 89 (C), must also be satisfied.¹⁸

12. Under Rule 89 (C), the Chamber has a broad discretion to admit any evidence which it deems to be relevant and of probative value.¹⁹ The party moving for the admission of the

Trial Chambers to Issue and (*sic*) Order in Lieu of an Indictment and Appoint an *Amicus Curiae* to Prosecute the Matter of Perjury of Witness GFA, GAP and GKB & Joinder to Justin Mugenzi’s Motion for the Trial Chambers to Exercise its Power to Admit the Transcripts of the Evidence Given in the Case of *Karempera et al.* by the Witness Known in the Instant Proceedings as GFA & Add Particular Conclusions to Bicomumpaka’s Case,” filed 16 June 2008.

¹⁴ Response, para. 6.

¹⁵ Response, paras. 7-8, 12.

¹⁶ *Bizimungu et al.*, Decision on Casimir Bizimungu’s Motion to Vary Witness List; and to Admit Evidence of Witness in Written Form in Lieu of Oral Testimony (*Bizimungu 92 bis* Decision) (TC), 1 May 2008, para. 17.; *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Request to have Written Statements Admitted Under Rule 92 *bis* (TC), 21 March 2002, para. 22, *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C) (AC), 7 June 2002, fn. 28, in support of the Appeals Chamber’s statement of principle, at paragraph 10 of its Decision, that the term “acts and conduct of the accused as charged in the indictment” does not refer to the acts and conduct of others for which the accused is charged in the indictment with responsibility. *See also*, *Karempera et al.*, Decision on Prosecution Motion for Admission of Evidence of Rape and Sexual Assault Pursuant to Rule 92 *bis* of the Rules; and Order for Reduction of Prosecution Witness List, 11 December 2006, para. 11, indicating that the term, “acts and conduct of the accused” has the same meaning in 92 *bis* (D) as it does in 92 *bis* (A).

¹⁷ *See*, *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-T, Decision on the Prosecutor’s Motion to Remove from Her Witness List Five Deceased Witnesses and to Admit Into Evidence the Witness Statements of Four of Said Witnesses, 22 January 2008, para. 19.

¹⁸ *Bizimungu 92 bis* Decision, para. 20; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92 *bis* (TC), 9 March 2004, para. 12.

documents bears the burden of establishing, *prima facie*, that the document is relevant and has probative value.²⁰

13. 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.²¹ Evidence tendered before the Chamber has probative value if it tends to prove or disprove an issue and has sufficient *indicia* of reliability.²²

14. The exercise of a Chamber's discretion under Rules 92 *bis* and 89 (C) must be governed by the right of the Accused to a fair trial, as provided for in Articles 19 and 20 of the Statute.²³

Description of the evidence

15. The Defence seeks to admit open, extracted and closed session transcripts of GFA's testimony in *Karemera et al.* on 10, 14, 15, 16 and 17 April 2008, as well as two unsealed and various sealed exhibits admitted during that testimony.²⁴ Many of the exhibits sought to be admitted are annexed to the Defence Motion.

16. The unsealed documents consist of one witness statement as well as the text of a Rwandan law.²⁵

17. The sealed exhibits include: several numbered lists containing the names of persons who were mentioned by number in the testimony to protect their identities, or names written by the Witness to avoid stating them in court;²⁶ witness statements made by GFA;²⁷ one document entitled, "Investigation Notes," from the *Karemera et al.* file;²⁸ one document entitled

¹⁹ *Bizimungu et al.*, Decision on Defence Motions to Admit Church Records and School Records, (Rule 89 (C)) (Church Records Decision) (TC), 2 June 2008, para. 9, (citations omitted).

²⁰ Church Records Decision, para. 9.

²¹ Church Records Decision, para.10.

²² Church Records Decision, para.10.

²³ *Bizimungu 92 bis* Decision, para. 20. Article 19 (1) and 20 (2) of the Statute of the International Criminal Tribunal for Rwanda read as follows: 19 (1) The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses; 20 (2) In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 21 of the Statute.

²⁴ *See*, Motion, para. Prayer. "Those representing Justin Mugenzi [...] move the Chamber to issue an order in the following terms: [...] the transcripts of the testimony given by [GFA] when he testified in the trial of The Prosecutor v Karemera and others between 10 and 17 April 2008, together with the exhibits referred (*sic*) during the course of that testimony shall [...] be admitted into evidence and assigned appropriate exhibit numbers."; para. 30. "This Motion should be understood to be requesting that the entirety of GFA's testimony and all of the exhibits produce (*sic*) in the course of his evidence be the subject of an order under Rule 92*bis*."

²⁵ *Id.*, DNZ 462 (Declaration of Bonaventure Ubalijoro); P 304 (text of Rwandan organic law dated 30 August 1996.)

²⁶ *Karemera et al.*, Defence exhibits for Nzirorera (DNZ) 450, 451, 452, 453, 454, 458, 459: Prosecution exhibits (P): 229, 229A, 229B (The document labelled as P299 which was attached to the Motion is not the P299 used in the *Karemera et al.*, nor were copies of P299A or 299B attached to the Motion.)

²⁷ *Id.*, DNZ: 137A/B/C, 139A/B/C, 140A/B/C, 141A/B/C, 148A/B, 149A/B, 150A/B, 455A/B, 457A/B; Defence exhibit for Ngirumpatse (DNG): 18A/B.

²⁸ *Id.*, DNZ 456.

“Certificate of Acknowledgment of Receipt of Information”;²⁹ several documents relating to GFA’s proceedings in the Rwandan *Gacaca* courts;³⁰ transcripts of the DVD recordings from the interview conducted by Bicamumpaka’s Defence on 8 February 2008, pursuant to this Chamber’s Order of 5 December 2007; and a letter purportedly written by GFA requesting that the Tribunal facilitate such an interview.³¹

18. With regard to the closed session testimony, extracted portions of those transcripts, and the sealed exhibits sought for admission, the Chamber notes that pursuant to Rules 75 (F) and (G) of the Rules, the Accused in this case must make an application before the *Karemera et al.* Chamber for access to, and use of, such materials in these proceedings.³²

19. Alternatively, the Prosecution may be under an obligation to disclose to the Defence closed session materials, or exhibits admitted under seal, in circumstances where it might affect, for example, the credibility of a Prosecution witness in another case.³³ Rule 75 (F) (ii) of the Rules provides that once protective measures have been ordered in any proceedings, they “shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules.” The Chamber recalls that according to the jurisprudence of the Tribunal, this Sub-Rule is intended to create a mechanism for the routine disclosure of closed session testimony without the need for the Defence to make an individualised application to the Trial Chamber who granted a protective order.³⁴

20. Some of the closed session materials in the Defence’s possession were disclosed to it by the Prosecution.³⁵

²⁹ *Id.*, DNZ 128.

³⁰ *Karemera et al.*, Prosecution Exhibits (P): 300, 301, 302A, 303A, 303B.

³¹ *Id.*, DNZ 461 (DVD transcripts); 460 (letter from GFA.) Both documents have previously been before this court when those items were attached to Defence Motions. The letter, allegedly from GFA, requesting an interview with Defence counsel was attached to “Request by Defendant Bicamumpaka to Contact and Meet with Prosecution Witness GFA,” filed 19 September 2007. The DVD Transcripts were attached to “Bicamumpaka’s Motion for the Recall of Witness GFA, for Disclosure of Exculpatory Material and for Meetings with GFA,” filed 4 April 2008.

³² Rule 75 (F) provides that “once protective measures have been ordered in respect of . . . a witness in any proceeding before the Tribunal, such protective measures: shall continue to have effect *mutatis mutandis* in any other proceeding before the Tribunal unless they are rescinded, varied or augmented in accordance with the procedure set out in this Rule.” Rule 75 (G) requires that “a party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings must apply to any Chamber, however constituted, remaining seized of the first proceedings.”

³³ See Rule 68 (A) of the Rules, pursuant to which the Prosecution is required to disclose to the Defence any material which may affect the credibility of Prosecution evidence.

³⁴ *Prosecutor v. Nahimana et. al.* Case No. ICTR-99-52-T, Decision on Disclosure of Transcripts and exhibits of Witness X,” (TC) 3 June 2004 paras. 4 and 5; *Prosecutor v. Nyiramasuhuko et al.* Case No. ICTR-98-42-T, Decision on the Prosecutor’s ex-parte and Extremely Urgent Motion to Access Closed Session Transcripts in Case No. ICTR-96-3-A to Disclose to Case No. ICTR-98-42-T” (TC) of 23 September 2004; and Decision on the Prosecutor’s Motion for an Order of Disclosure of Closed Session Transcripts and Sealed Prosecution Exhibits Pursuant to rules 69 and 75; *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Disclosure on the Prosecutor’s Request for an Order for Disclosure of Closed Session Transcripts and Sealed Prosecution Exhibits Pursuant to Rules 69 and 75 of the Rules of Procedure and Evidence, 2 February 2005, para. 6.

³⁵ See Defence Motion, para. 30.

21. With regard to the remainder of the closed session material, the Mugenzi Defence made an application before the *Karemera et al.* Chamber for permission to use that material. By decision of that Trial Chamber, the Defence was granted permission to use exhibits admitted under seal in that case.³⁶

Is the material admissible pursuant to Rule 92 bis (D)?

(i) Is the evidence relevant and probative?

22. The Chamber is satisfied, as a preliminary step, that the evidence meets the general requirements of Rule 89 (C) since it pertains to the issue of Prosecution Witness GFA's credibility and is comprised of official testimony given before this Tribunal, and related exhibits. The Chamber notes that, generally speaking, material relating to the credibility of a witness is *prima facie* relevant and probative.³⁷

23. However, the Chamber considers that one exhibit sought to be admitted (and annexed to the Defence Motion) is not relevant to the testimony of GFA in *Karemera et al.* The Declaration of Bonaventure Ubalijoro was admitted following a decision by the *Karemera et al.* Chamber on a day during which GFA testified. However, it was not relevant to GFA's evidence.³⁸

(ii) Do the transcripts and exhibits go to proof of a matter other than acts and conduct of the accused?

24. The Prosecution asserts, without identifying specific passages, that certain parts of the transcript cannot be admitted into evidence because they go to proof of acts and conduct of the accused.³⁹ The Defence specifies several passages which, it acknowledges, arguably relate to acts and conduct of the accused, and asserts that "in the worst case, those passages . . . could be excised."⁴⁰

25. The Chamber considers that some portions of Prosecution Witness GFA's testimony in the *Karemera et al.* case do concern the acts and conduct of the Accused in this case.⁴¹ However,

³⁶ *Karemera et al.*, Decision on Justin Mugenzi's Confidential Motion for the Variation of Protective Measures in Respect of Witness BTH/ GFA and the Transmission of Sealed Exhibits Produced and Referred to During the Course of that Witness's Testimony in the Same Proceedings (TC), 26 August 2008.

³⁷ *Bizimungu et al.*, Decision on Jerome (*sic*) Bicamumpaka's Confidential and Amended Motion to Admit Rwandan Judicial Records into Evidence, 10 June 2008, para. 11, fn. 12.

³⁸ See, *Karemera et al.*, T. 15 April 2008, p. 1.; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Statement (*sic*) of Bonaventure Ubalijoro, 14 April 2008.

³⁹ Response, para. 6.

⁴⁰ Defence Motion, Para. 34.

⁴¹ For example, See, *Karemera et al.*, T. 10 April 2008. Defence Counsel for Mr. Nzirorera asks, "You testified that on that occasion, Nzirorera and Casimir Bizimungu, Minister Bicamumpaka and General Augustin Bizimungu had attended this event [the swearing in of a new *préfet* at Gisesero] along with the *Interahamwe*. . . . And then after the meeting, the authorities went to a reception. . . . Was any of that true?" GFA responds, "No, that was not true. . . . But in reality, no such meetings were organised, and the people mentioned did not participate in the meetings which, of course, did not take place at all. Counsel then asks, "Did you ever see Minister Jérôme Bicamumpaka between the 6th of April 1994 and the time you went into exile?" GFA replies, "No, I never saw him.;" T. 10 April 2008, p. 45. In

the Chamber is of the view that since the further evidence given by GFA in the *Karemera et al.* case raises significant concerns about his credibility, it must consider the Rule 92 *bis* limitations within the general context of the Accused's right to fair trial - in particular those provided for in Articles 19 and 20 of the Statute. Notably, the Accused has the right to examine witnesses against him, pursuant to Article 20 (4) (e) of the Statute.

26. In this instance, the Chamber has already considered there to be good cause for hearing further evidence from Witness GFA on the issue of his false testimony.⁴² Additionally, Witness GFA specifically admitted before the *Karemera et al.* Chamber that he gave false testimony before this Chamber, against the Accused persons in this case. At present this testimony is not properly before this Chamber.

27. The Chamber notes that, in particular circumstances, other Trial Chambers of this Tribunal have considered it warranted to admit evidence in the form of written statements or prior testimonies which went to the acts and conduct of the Accused.⁴³

28. The Chamber considers that the aspect of 92 *bis* which usually functions to protect the Accused should not be relied upon to prevent the Defence from admitting the evidence of a Prosecution Witness in this case, who admitted to lying before this Chamber in the course of testimony before another Chamber. Since it is unlikely that the Accused will be afforded an opportunity to act upon the Chamber's Recall Decision, the Chamber considers it necessary to admit the entirety of Witness GFA's recent testimony before the *Karemera et al.* Chamber in order to properly assess his credibility in this case, and in order to preserve the Accused's right to fair trial. However, the Chamber will admit these materials solely for the purpose of evaluating the credibility of Witness GFA's prior testimony before this Chamber.⁴⁴

the context of describing various events and locations, Counsel asks, "And during the period from the 6th of April until you went into exile, did you see Casimir Bizimungu at all?" GFA answers, "No, I did not see him."

⁴² Recall Decision, (Granting the Defence Motion to meet with Witness GFA in preparation for further cross-examination and Ordering the recall of GFA before the Chamber for further cross-examination on the issue of his false testimony.); Meet With GFA Decision, (Granting the Defence Motion meet with Witness GFA in order to prepare its case.); Oral Ruling, "[GFA's] testimony is necessary and appropriate for the conduct and fairness of the trial. The Chamber considers that the circumstances of GFA's disappearance make it clear that he will no longer voluntarily appear before the Chamber. . . . [T]he Chamber notes that it re-called GFA for further cross-examination because it had information that GFA. . . wished to recant the testimony previously given before this Chamber on behalf of the Prosecution. The Chamber considers that GFA, therefore, has information which can materially assist the Defence, particularly -- particularly for Mr. Bicomumpaka, in respect of clearly identified, relevant issues, and that his further cross-examination may be necessary and appropriate for the conduct and fairness of the trial."

⁴³ *Prosecutor v. Kamuhanda*, Case No. ICTR-99-54A-T, Decision on Kamuhanda's Motion to Admit Into Evidence Two Statements by Witness GER (*Kamuhanda* Decision), 20 May 2003 (was originally recorded as 20 May 2002), para. 31, "It appears to this Chamber that a proper reading of Rules 89(C) and 92*bis* may not interfere with the Chamber's discretion in a fitting case, at the instance (*sic*) of the accused, to admit statements of witnesses which are relevant and have probative value, even if those witnesses might be dead."; *See also Prosecutor v Ngeze*, Case No. ICTR-99-52-T, Decision on the Defence Motion to Admit Into Evidence Prosecution Witness's Statements; Alternatively to Produce Additional Defence Witnesses (*Ngeze* Decision), 5 June 2003. Admitting one unavailable Witness's statement for the purpose of challenging the credibility of another Witness testimony based on the "particular circumstances" of the case. *See also, Prosecutor v. Muhimana*, Case No. ICTR-95-1B-T, Decision on the Prosecution Motion for Admission of Witness Statements (TC), 20 May 2004, para. 29-30, citing the above cases.

⁴⁴ *See, Ngeze* Decision, para 6. Also admitting evidence for the limited purpose of assessing credibility.

29. Finally, the Chamber notes that it reserves its decision on the weight to be afforded to the further testimony given by GFA in the *Karemera et al* case to the final determination of these proceedings.⁴⁵

FOR THESE REASONS, the Chamber in order to ensure the minimum guarantees afforded to the Accused by Articles 19 and 20 of the Statute, hereby,

GRANTS the Defence Motion in its entirety; and

ADMITS into evidence, pursuant to Rules 89 (C) and 92 *bis* (D) of the Rules,

- the transcripts of Witness GFA's testimony given before the *Karemera et al.* Chamber on 10, 14, 15 16 and 17 April 2008, including all testimony given by the Witness in closed session, and any extracted portions of that testimony; and
- all exhibits tendered and referred to during the course of the aforementioned testimony, excepting the Declaration of Bonaventure Ubalijoro; and

DIRECTS the Registry to assign appropriate exhibit numbers to the transcripts and exhibits, which appear in their entirety as annexures to Justin Mugenzi's Motions of 26 May 2008, and 29 August 2009, forthwith.

Arusha, 26 September 2008

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

Emile Francis Short
Judge

[Seal of the Tribunal]

⁴⁵ *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. 31. *See also*, *Bizimungu et al.*, Decision on Defence Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges, 2 September 2005, for a general discussion of the distinction between admitting evidence and assigning relative weight to that evidence.