



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

28354
A

ICTR-99-50-T

01-10-2008

(28354-28352)

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 1 October 2008

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

JUDICIAL RECORDS/ARCHIVE:
RECEIVED

2008 OCT - 1 1 P 5:39

Case No. ICTR-99-50-T

**DECISION ON MUGIRANEZA'S MOTION TO ADMIT CHURCH RECORDS
PURSUANT TO RULE 89(C)**

Office of the Prosecutor:

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

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. The Defence for Prosper Mugiraneza seeks to have admitted into evidence a copy of a record which purports to be from the Archdiocese de Kigali. The Defence identifies the document as a church record confirming the baptism of Mugiraneza's daughter.¹
2. The Defence submits that there was confusing testimony from various witnesses about a baptism in Mugiraneza's home some time in 1993. The Defence asserts that the record is relevant and should be admitted into evidence because it shows that Mugiraneza's child was not baptised on Easter weekend in Kigarama Commune in 1994, because it corroborates Mugiraneza's testimony regarding the baptism of his daughter, and because it demonstrates that Defence Witness RWD's testimony about a baptism celebration at Mugiraneza's home did not involve his youngest child.²
3. The Prosecutor objects to the admission of the document on the basis that the Defence has not demonstrated that the document is relevant and probative.³

DISCUSSION

The Law on Admission of Evidence

4. The Chamber has a broad discretion under Rule 89 (C) to admit any evidence which it deems to be relevant and probative. The moving party bears the burden of demonstrating, *prima facie*, that the material for which admission is sought is relevant and that it has probative value.⁴
5. For the purposes of Rule 89 (C), evidence will be considered relevant where there is a connection between the evidence and proof of an allegation sufficiently pleaded in the indictment. Evidence has probative value if it tends to prove or disprove an issue and has sufficient *indicia* of reliability.⁵

Does the Document Meet the Test for Admission Under Rule 89 (C)?

6. The record which the Defence seeks to admit appears to be an official document. At the top of the record are the words "Archidiocese de Kigali," and the document also bears a stamp of the same name. The record contains the name Prosper Mugiraneza, as well as the names of his wife and his child. It describes the "Bapt. Die", or day of the baptism, as having taken place on 18 July 1993. The Chamber is satisfied that the document is sufficiently reliable.

¹ *Prosecutor v. Casimir Bizimungu*, ICTR-99-50-T, "Prosper Mugiraneza's Motion to Admit Church Records Pursuant to Rule 89(C)", filed 25 July 2008 ("Motion").

² Motion, paras. 2, 3.

³ *Bizimungu et al.*, "Prosecutor's Response to Mugiraneza's Rule 89 (C) Motion to Admit Church Records", filed 13 August 2008.

⁴ *Bizimungu et al.*, Decision on Jerome Bicamumpaka's Confidential and Amended Motion to Admit Rwandan Judicial Records Into Evidence, 10 June 2008, paras 4 -5 (citations omitted); *Bizimungu et al.*, Decision on Justin Mugenzi's Motion to Admit Into Evidence the Transcripts from the Munyakazi Referral Hearing, 23 July 2008, paras. 9-10 (citations omitted).

⁵ *Ibid.*



28352

7. Defence Witness RWC testified that she saw Mugiraneza at the baptism of his child in 1993,⁶ while Defence Witness RWD testified about a party in Mugiraneza's home for the baptism of his sons.⁷ The Defence submits that the testimony from these witnesses was confusing.

8. However, the Defence failed to demonstrate in its motion that the church record is, *prima facie*, relevant and probative. The Defence does not explain how the baptism is related to any of the charges against the Accused, nor does the Defence adequately explain how the baptism record is probative.

9. The Chamber notes that this is not the first time that the submissions filed by Mugiraneza have required the Chamber to search in vain to find the relevancy and probative value of the document for which admission is sought.⁸ The Chamber reminds the Defence that it bears the burden of demonstrating that the evidence is, *prima facie*, relevant to one or more of the charges against the Accused, and that it has probative value. In this instance, the Defence could have attempted to meet this burden, for example, by identifying the relevant allegation against the Accused, explaining how the evidence relates to the charge, and specifying the Prosecution witness who testified thereto.

10. The Chamber is not satisfied that the church record is relevant or probative.

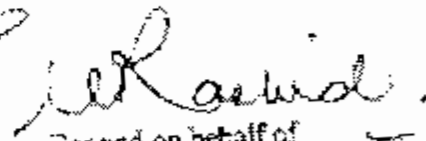
FOR THESE REASONS, the Chamber

DENIES the Defence Motion in its entirety.

Arusha, 1 October 2008


Chelida Rachid Khan
Presiding Judge


L. Gacumba Muthoga
Judge


For and on behalf of
Emile Francis Shon
Judge



⁶ *Rujumbura et al.*, T. 28 February 2008.

⁷ *Rujumbura et al.*, T. 12 March 2008.

⁸ *Rujumbura et al.*, Decision on Defence Motions to Admit Church Records and School Records Pursuant to Rule 89 (C), 2 June 2008.