



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
22-10-2008
(39921-39919)

39921
S. MUSA

TRIAL CHAMBER I

-2242

Before: Judge Erik Mose, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 22 October 2008

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THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

Decision on Ntabakuze Defence Motions for the Admission of Additional Evidence

The Office of the Prosecutor
Hassan Bubacar Jallow
Alex Obote-Odora

Counsel for Aloys Ntabakuze
Peter Erlinder

Counsel for the Other Accused
Raphaël Constant
Paul Skolnik
Kennedy Ogetto

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA.

39920

SITTING as Trial Chamber I, composed of Judge Erik Mose, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the Ntabakuze Motion for additional evidence, filed on 14 June 2008;

CONSIDERING the Prosecution response, filed on 24 June 2008;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 1 June 2007, the Chamber heard closing arguments and adjourned the proceedings. The case is now under deliberation. The Defence seeks the admission of an indictment issued by Judge Andreu of Spain against members or former members of the Rwandan Patriotic Army (RPA) and the Rwandan Patriotic Front (RPF).¹ The indictment was issued on 8 February 2008.

2. The Ntabakuze Defence submits that the indictment provides further corroboration of Defence testimony on the conduct of the war following the assassination of President Habyarimana, which involved crimes committed by the RPA that have been charged to the Accused. Referring to Rules 115 and 120 of the Rules of Procedure and Evidence ("the Rules") as a basis for admission, the Defence contends that the indictment should be admitted since it has become available while the Chamber is still seized of the case. Otherwise, in accordance with these Rules, the Appeals Chamber may not permit its admission during subsequent appellate or review proceedings. Reference is also made to Rules 89, 93 and 94.²

3. Alternatively, the Defence contends that the Prosecution has failed to disclose evidence related to crimes committed by the RPF related to events also charged against the Accused, notably in Kabgayi in Gitarama prefecture. The Chamber should therefore order the production of the evidence intentionally withheld by the Prosecution.³

4. The Prosecution responds that the motion should be dismissed in its entirety, as it lacks legal basis.⁴

DELIBERATIONS

5. Rules 115 and 120 do not provide a basis for admitting additional evidence at trial after the close of the proceedings. These rules are relevant only to the admission of additional evidence on appeal and during review proceedings.

6. The Appeals Chamber has held that, under Rule 89 (C), a Chamber may permit a party to reopen its case in order to present "fresh evidence". The main consideration is whether, with reasonable diligence, the evidence could have been identified and presented during the case of the party making the application. If it is shown that the evidence could not have been found with the exercise of reasonable diligence before the close of a party's case, the

¹ Ntabakuze Motion to Supplement the Trial Record with the Indictment of Leading Members of the RPA/IF Issued by Judge Andreu of Spain, 14 June 2008.

² Motion, paras. 1-13.

³ Motion, paras. 14-17.

⁴ Prosecutor's Response to Ntabakuze's Motion to Supplement the Trial Record with the Indictment of Leading Members of the RPA/IF Issued by Judge Andreu of Spain, 24 June 2008, paras. 1-9.

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Chamber has discretion to admit the evidence after taking into account both the probative value of that evidence and the need to ensure a fair trial.⁵

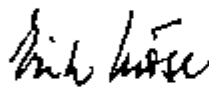
7. The Spanish indictment was issued eight months after closing arguments in this case and thus was not available during the presentation of the Defence evidence. As regards its probative value and its potential impact on the fairness of the proceedings, the Chamber recalls that it has already admitted evidence related to the Defence's theory that the RPF and RPA were responsible for triggering the crimes committed in Rwanda after 6 April. The Defence acknowledges that the Spanish indictment simply corroborates this existing body of evidence.⁶ Its admission would be unnecessarily cumulative and thus of limited probative value. Permitting cumulative evidence at this stage may adversely impact the fairness of the proceedings by necessitating further submissions and delaying the delivery of the judgement. The Chamber declines to reopen the Defence case in order to admit the indictment.

8. The Defence's assertion that the Prosecution's alleged disclosure violations necessitate admission of the evidence lacks merit. The Chamber has considered these arguments in a decision on motions dealing with these alleged violations, issued today.⁷

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence motion.

Arusha, 22 October 2008



Erik Mose
Presiding Judge



Jai Ram Reddy
A.A. Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]



⁵ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement (AC), 17 December 2004, para. 222; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement (AC), 20 February 2001, para. 283.

⁶ Motion, paras. 2, 3, 10-11.

⁷ See *Bagosora et al.*, Decision on Ntabakuze Defence Motions concerning Disclosure of Exculpatory Evidence (TC), 21 October 2008.