



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
24-10-2008
(68005 - 68003)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

68005
Mwamp

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 24 October 2008

THE PROSECUTOR

v.

Augustin NDINDILIYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

JUDICIAL RECORDS/ARCHIVE
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**DECISION ON THE PROSECUTION MOTION TO VARY THE CHAMBER'S
ORDER CONCERNING THE PROSECUTOR'S RULE 68 DISCLOSURE
OBLIGATIONS**

Office of the Prosecutor:

Mr. Alphonse Van
Mr. Moussa Sefon
Mr. Segun Jegede
Mr. Lloyd Strickland
Mr. Abubacarr Tambadou
Ms. Felistas Mushi
Ms. Faria Rekkas
Ms. Marlize Keefer

Counsel for the Defence:

Mr. Gilles St-Laurent and Mr. Henry Benoit for Augustin Bizimungu
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndiindiliyimana
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa and Mr. Seydou Doumbia for Innocent Sagahutu

INTRODUCTION

1. On 22 September 2008, the Trial Chamber granted, in part, the Defence motions pertaining to the Prosecution's Rule 68 disclosure obligations and held that the Prosecution had violated its obligations under Rule 68 of the Rules of Procedure and Evidence ("the Rules") in respect of several documents containing exculpatory material. Consequently, the Chamber ordered the Prosecutor to immediately disclose to the Defence in un-redacted format all the documents listed in confidential annexes 2 and 3 attached to the aforesaid Decision.¹
2. In a Motion filed on 30 September 2008², the Prosecution submits that all the statements contained in confidential annex 3 have already been disclosed to the Defence in un-redacted format on 29 February 2008 with the exception of the statement of Witness ANU. The Prosecution therefore requests the Chamber to vary its Decision which ordered it to disclose the aforesaid statements. The Prosecution further requests the Trial Chamber to deem the statements disclosed on 29 February 2008 as having been disclosed pursuant to its Decision of 22 September 2008. The Defence teams did not respond to the motion.
3. The Prosecution also submits that this is the first time that the Chamber has made a finding of a violation of its Rule 68 disclosure obligations in this case. Therefore, the Prosecutor avers that it has never been found to have "persistently violated" its disclosure obligations under Rule 68 as is stated in paragraph 59 of the said decision.

DELIBERATIONS

4. The Chamber acknowledges that on 29 February 2008, the Prosecution disclosed a total of 140 statements containing about 3000 pages pursuant to the Chamber's Order of 4 February 2008 which required the Prosecution to review the documents in its possession and to disclose all exculpatory material to the Defence by end of February 2008. The Chamber further finds that the statements listed in Annex 3 of its Decision of 22 September 2008 were contained in that disclosure except the statement of Prosecution Witness ANU. In light of this determination, the Chamber therefore varies its Decision of 22 of September 2008 which ordered the Prosecutor to disclose all the statements contained in confidential annex 3 appended to the said decision. Consequently, the Chamber deems the Prosecutor's disclosure of 29 February 2008 to be in compliance with its Decision of 22 September 2008.
5. With respect to the Prosecution's second argument regarding the Chamber's finding of a "persistent violation" of Rule 68 obligations, the Chamber recalls that Rule 68(A) requires the Prosecution to disclose to the Defence *as soon as is practicable*, any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of Prosecution evidence. The Chamber notes that timely disclosure of exculpatory material is of cardinal importance in achieving the purposes underpinning Rule 68. The Rule requires vigilance on the part of the Prosecution. In that respect, where the Prosecution receives into its custody information or material of an exculpatory nature, but fails to disclose it in a timely manner, the violation commences at the time of receipt of the information and persists until proper disclosure takes place pursuant to Rule 68. The Prosecution cannot, in those circumstances, be heard to say that he was unaware that the documents were in its possession. The Chamber holds that the import of its

¹ See *Prosecutor v. Ndingiriyimana et al.*, Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68, filed on 22 September 2008.

² Prosecutor's Motion Pursuant to Rules 54 and 73 to Vary the Chamber's Order Concerning the Prosecutor's Rule 68 Disclosure Obligations, filed on 30 September 2008.



finding in Paragraph 59 is in accordance with the emphasis that Rule 68 places on timely disclosure. Therefore, it is irrelevant whether the Chamber's decision of 22 September 2008 was the first time that the Chamber found the Prosecution to have violated its Rule 68 disclosure obligation. The Chamber finds that the Prosecution submission on this issue lacks merit and is therefore dismissed.

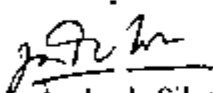
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion in part

VARIES its Decision of 22 September 2008 accordingly;

DISMISSES the Motion in all other respects.

Arusha: 24 October 2008


Asoka de Silva
Presiding Judge




Seon Ki Park
Judge

[Seal of the Tribunal]

