



ICTR-98-42-T
(14-01-2008)
(13195-13190)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

13195
Mung

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 14 January 2009

JUDICIAL RECORDS ARCHIVES
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The PROSECUTOR

v.

Arsène Shalom NTAHOBALI

Case No. ICTR-97-21-T

Joint Case No. ICTR-98-42-T

**DECISION ON NTAHOBALI'S MOTION FOR CERTIFICATION TO APPEAL
THE DECISION ON NTAHOBALI'S MOTION FOR ADMISSION OF TWO
RWANDAN JUDGEMENTS INVOLVING PROSECUTION WITNESS TQ**

Office of the Prosecutor

Ms. Holo Makwaia
Ms. Adelaide Whest
Ms. Althea Alexis Windsor
Ms. Madeleine Schwarz
Mr. Tidiane Mara
Ms. Astou Mbow, *Case Manager*
Mr. Lansana Dumbuya, *Case Manager*

Counsel for Ntahobali

Mr. Normand Marquis

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramaroson and Solomy Balungi Bossa (the "Chamber");

BEING SEIZED of the "*Requête aux fins de certification d'appel de la 'Decision on Ntahobali's Motion for Admission of Two Rwandan Judgements Involving Prosecution Witness TQ'*", filed on 20 November 2008 ("Ntahobali's Motion");

CONSIDERING the:

- i. "Prosecutor's Response to the '*Requête aux fins de certification d'appel de la 'Decision on Ntahobali's Motion for Admission of Two Rwandan Judgements Involving Prosecution Witness TQ'*', filed on 25 November 2008 ("Prosecution's Response");
- ii. "*Réplique de Ntahobali à la réponse du Procureur à sa requête en certification d'appel de la décision du 14 novembre 2008 concernant le dépôt de deux jugements rwandais impliquant le témoin TQ*", filed confidentially on 28 November 2008 ("Ntahobali's Reply");

RECALLING the "Decision on Ntahobali's Motion for Admission of Two Rwandan Judgements" issued on 14 November 2008 (the "Impugned Decision");¹

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

NOW DECIDES the Motion pursuant to Rule 73 (A) of the Rules, on the basis of the written briefs filed by the Parties.

SUBMISSIONS OF THE PARTIES**Ntahobali's Motion**

1. The Defence requests the certification to appeal the Impugned Decision.
2. The Defence argues that the Impugned Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings. The Defence notes that at Paragraph 22 of the Impugned Decision, the Chamber stated that Ntahobali's case was closed save for the filing of "certain unspecified documents from Rwanda" whereas in its Decision of 30 September 2008 regarding the admission of 36 documents, the Chamber specifically indicated that Ntahobali's case was declared closed save for the filing of judgements (in plural) from the Supreme Court of Rwanda relating to Witness TQ.
3. The Defence recalls that it sought the admission of the Rwandan judgements relating to Witness TQ for credibility purposes. The Defence recalls the *Ntakirutimana* Appeal Judgement² and submits that the Chamber should pay special attention when assessing the

¹ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, "Decision on Ntahobali's Motion for Admission of Two Rwanda Judgements," 14 November 2008.

² *The Prosecutor v. Ntakirutimana*, Case No. ICTR-96-17-A, 13 December 2004, para. 129.



reliability and credibility of a witness who is an alleged accomplice, a detainee in Rwanda or has a criminal record, as is the case for Prosecution Witness TQ.³

4. The Defence underscores that Prosecution Witness TQ's credibility, who is the sole Witness who has incriminated Ntahobali in connection with the convoy of 5 June 1994, is seriously affected because he fled the Rwandan justice.⁴ The Defence further points out that the *Haute Cour Militaire* judgement in particular constitutes evidence that should be taken into consideration in evaluating Witness TQ's credibility especially in absence of any corroborating evidence. As such, the denial of the request for admission of these two judgements considerably affects the fairness and the outcome of the trial.⁵

5. The Defence submits that it is erroneous to state that the admission of the two judgements is strictly aimed at challenging Prosecution Witness TQ's credibility on two specific points as indicated in the Impugned Decision.⁶ According to the Defence, the admission of these documents is also sought to establish that during a trial held in Rwanda involving many accused persons in relation to crimes allegedly committed at the *Groupe Scolaire* and in Butare, no witness talked about the participation of Ntahobali in these crimes.⁷

6. The Defence alleges that the two judgements sought to be admitted are relevant contrary to what was stated in the Impugned Decision. Denying their admission would prevent the Defence from introducing evidence which would cast a reasonable doubt on his guilt regarding crimes charged against him in relation to events occurring at the *Groupe Scolaire* in Butare.⁸ It further affects the outcome of the trial as Ntahobali might be found guilty on uncorroborated and non-credible testimony.⁹

7. The Defence argues that the Impugned Decision might affect the expeditiousness of the proceedings because the Defence is bound to seek the recall of Prosecution Witness TQ to be confronted with the *Haute Cour Militaire* judgement, which is a new element.¹⁰ This would considerably slow the proceedings which are about to be completed.¹¹ Therefore, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

8. Finally, the Defence argues that the Chamber should certify the appeal on the basis of the listed errors which may convince and lead the Appeals Chamber to reverse the Impugned Decision.¹²

Prosecution's Response

9. The Prosecution submits that the Motion does not meet the requirements of Rule 73 (B). According to the Prosecution, it was entirely within the Chamber's discretion to deny the admission of the two Rwandan judgements as they lacked probative value. It further submits that the Defence has not established that the Chamber failed to reasonably exercise its discretion when deciding to deny the admission of these judgements.

³ Paragraph 16 of the Motion.

⁴ Paragraphs 18-19 of the Motion.

⁵ Paragraph 20 of the Motion.

⁶ Paragraph 21 of the Motion.

⁷ Paragraph 22 of the Motion.

⁸ Paragraph 25 of the Motion.

⁹ Paragraph 27 of the Motion.

¹⁰ Paragraph 28 of the Motion.

¹¹ Paragraph 30 of the Motion.

¹² Paragraphs 32-33 of the Motion.

Ntahobali's Reply

10. The Defence alleges that at the time of Prosecution Witness TQ's testimony, the Chamber was not aware of the appeal lodged against the *Conseil de Guerre* judgement. It further submits that the two judgements constitute an important element for the Chamber to assess the credibility of Witness's allegations against Ntahobali which might affect the outcome of the trial.

DELIBERATIONS

11. Recalling its jurisprudence,¹³ the Chamber notes that decisions rendered on Rule 73 motions are without interlocutory appeal, except at the Chamber's discretion for the very limited circumstances stipulated in Rule 73 (B).¹⁴ These conditions require a specific demonstration, namely that the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings, and are not met through a general reference to the submissions on which the Impugned Decision was rendered.

12. The Chamber notes that in its Motion, the Defence for Ntahobali has generally revisited the thrust of its previous arguments which led to the Impugned Decision, rather than demonstrating the conditions required for the Chamber to grant certification to appeal the Impugned Decision.

13. Furthermore and in any event, the Chamber recalls the Appeals Chamber Decision underscoring that matters concerning admissibility of evidence are the responsibility of the Trial Chamber as the trier of facts.¹⁵

14. The Chamber considers therefore that the Defence has failed to satisfy the criteria for certification to appeal under Rule 73(B).

¹³ *The Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-T, "Decision on Defence Motion for Certification to Appeal the "Decision on Defence Motion for a Stay of Proceedings and Abuse of Process", 19 March 2004 paragraphs 12 – 16; *The Prosecutor v. Ntahobali and Nyiramasuhuko*, Case No. ICTR-97-21-T, "Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 18 March 2004, paragraphs 14 – 17.

¹⁴ Under the first limb of Rule 73 (B), the applicant must show how an appellate review would significantly affect (a) a fair and expeditious conduct of the proceeding, or (b) the outcome of the trial. This condition is not determined on the merits of the appeal. Second, the applicant has the burden of convincing the Chamber that an "immediate resolution by the Appeals Chamber may materially advance the proceedings."

¹⁵ *The Prosecutor v. Nyiramasuhuko*, Case No. ICTR-97-21-A Appeals Chamber Decision, 4 October 2004, para. 5.



FOR THE ABOVE REASONS, THE TRIBUNAL

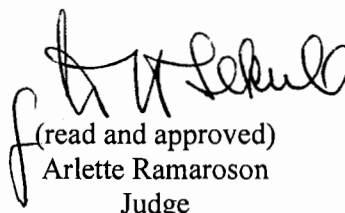
DENIES the Motion in its entirety.

Arusha 14 January 2008



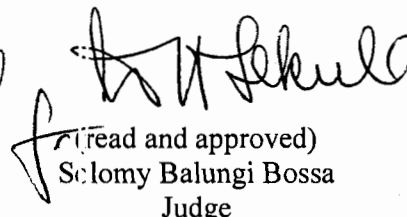
William H. Sekule

Presiding Judge


(read and approved)
Arlette Ramaroson
Judge

(absent at the time of
signature)




(read and approved)
Solomy Balungi Bossa
Judge

(absent at the time of
signature)