



UNITED NATIONS
NATIONS UNIES

ICTR-00-5A-R94bis
(29-01-2009
(425-422))
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

425-
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OR: ENG

TRIAL CHAMBER III

Before Judge: C. M. Dennis Byron, Presiding

Registrar: Adama Dieng

Date: 29 January 2009

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JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-R94bis

**DECISION ADMITTING THE EXPERT EVIDENCE OF
ÉVARISTE NTAKIRUTIMANA**

Rules 92bis(D) and 94bis of the Rules of Procedure and Evidence

Prosecution Counsel:
Mr. Charles Adeogun-Phillips
Mr. Ibukunolu Babajide

Defence Counsel:
Mr. William E. Taylor III
Ms. Abbe Jolles

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INTRODUCTION

1. On 4 December 2008, the Prosecutor filed a motion seeking the admission of the evidence of Évariste Ntakirutimana, an expert witness ("First Motion").¹ On 14 January 2009, the Chamber denied the motion, and granted leave to the Prosecutor to correct his filing, and resubmit it within 24 hours.²
2. On 15 January 2009, the Prosecutor filed this motion in compliance with the order ("Second Motion").³ The Defence has not responded to the motion within the time-limit prescribed by the Rules. The Chamber will now rule on the motion.

EXPERT EVIDENCE TO BE ADMITTED

3. Évariste Ntakirutimana was admitted as an expert in the *Nyiramasuhuko et al.* case before Trial Chamber II.⁴ During the initial trial of Tharcisse Muvunyi, the Prosecutor sought the admission of the expert opinion of Évariste Ntakirutimana. On 24 March 2005, the Chamber granted the motion and admitted into evidence the two expert reports,⁵ and the transcripts of his testimony in *Nyiramasuhuko et al.* on 13 September 2004, thereby implicitly

¹ The Prosecutor's Motion for Admission of Testimony of Expert Witness Pursuant to Rules 54, 73 and 92bis, 4 December 2008.

² T. 14 January 2009, p. 5:

"The admission of the testimony of Expert Witness Ntakirutimana pursuant to Rule 92 bis of the rules. The Chamber finds that the understanding of the words and expressions uttered during the alleged meeting at Gikore trade centre is a critical issue in the case before the Chamber in this re-trial. Consequently the Chamber finds that the expert, Evariste Ntakirutimana, who testified in the first trial of Tharcisse Muvunyi, will offer a relevant opinion. The Defence motion to have Expert Evariste Ntakirutimana stricken from the witness list is dismissed.

The Prosecution filed a motion for admission of testimony of expert witnesses, pursuant to Rule 92 bis, on 4th December 2008. As a preliminary matter, the Chamber observes that the annex to the motion is lacking documents compared to the lists given in the body of the motion. The transcripts of 6 July 2005 in the Muvunyi case attached to the motion are the cross-examination of Expert Ntakirutimana in the Muvunyi case. Though, as they were not accompanied by the report of this expert, the Chamber is not in a position to address their relevance. Consequently, the Chamber dismisses the Prosecution motion for admission of expert testimony, but grants leave to the Prosecution to file a new motion clarifying these issues within 24 hours from the notification of this order."

³ The Prosecutor's Motion for the Admission of Expert Witness Testimony Pursuant to Rules 54, 73 and 92bis, 15 January 2009.

⁴ *The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, T. 13 September 2004. During that hearing the Trial Chamber admitted three exhibits:

(i) CV of Dr. Évariste Ntakirutimana dated 24 August 2004 and filed on 25 August 2004 (P. 157, A for French and B for English);

(ii) Expert Report of Dr. Évariste Ntakirutimana "Sociolinguistic Analysis of some polysemic terms produced during the war period (1990-1994) in Rwanda" (P. 158, A for French and B for English);

(iii) Expert Report of Dr. Évariste Ntakirutimana "Tolerance or Intransigence in Sindikubwabo's Speech in Butare?" (P. 159, A for French and B for English).

⁵ Exhibits 158 and 159 referred to above.

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granting Évariste Ntakirutimana expert status.⁶ The Chamber overruled the Defence's objections but ordered that the expert appear for cross-examination. On 6 July 2006, the expert appeared for cross-examination.⁷

4. The Chamber, therefore, considers that the expert evidence in the initial *Muvunyi* trial is comprised of the two reports and the transcripts of the hearing of the expert both in the *Nyiramasuhuko et al.* trial on 13 September 2004 and in the initial *Muvunyi* trial on 6 July 2006.

5. In the First Motion, the Prosecutor attached only one of the two expert reports (Exhibit 159), the expert's *curriculum vitae* (Exhibit 157), and the transcripts of the cross-examination during the initial trial, while in footnote 1 he referred to all the documents admitted on 24 March 2005. That was the confusion which, on 14 January 2009, the Chamber requested the Prosecutor to correct.⁸ However, in his filing of 15 January 2009, the Prosecutor again referred to all the same documents but attached only the second report (Exhibit 158).

MERITS OF THE MOTION

6. The Chamber recalls that it has already been determined that the expert evidence of Évariste Ntakirutimana is relevant to the case and admissible.⁹

7. The Chamber deplores the continuous unsatisfactory filings of the Prosecutor in this matter and expects the parties to make proper filings. The failure to do so makes it difficult for the Chamber to determine which documents the Prosecutor intends to have admitted. Bearing in mind the decision on the scope of the retrial limiting the admissible evidence to whatever had previously been presented during the initial trial,¹⁰ the Chamber considers that the maximum which could be admitted would be the complete set of documents admitted in the Decision of 24 March 2005 and the transcripts of the cross-examination. In those circumstances, and to expedite the management of this matter, the Chamber will admit those documents as the expert evidence for the retrial. It is open to the Defence to seek

⁶ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on the Prosecutor's Motion for Admission of Testimony of Expert Witness (TC2), 24 March 2005. However no exhibit number has been attributed to those documentary evidence.

⁷ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T, T. 6 July 2006.

⁸ See T. 14 January 2009, p. 5, quotation inserted above.

⁹ See T. 14 January 2009, p. 5, quotation inserted above.

¹⁰ See T. 14 January 2009, p. 3: "[T]he Chamber considers that the scope of the re-trial of Tharcisse Muvunyi shall be limited to the evidence adduced before the Trial Chamber by the Prosecution during the initial trial, as far as it is relevant to the remaining charge".

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leave if it wishes to further cross-examine the expert. To expedite the management of the case, the Chamber considers it appropriate to allow the Defence to seek such leave within the seven days after notification of this decision.

FOR THE ABOVE REASONS,

THE CHAMBER

- I. **ADMITS** Évariste Ntakirutimana as an expert in this case;
- II. **ADMITS** the two reports presented by Évariste Ntakirutimana in *Nyira wasuhuko et al.*;
- III. **ADMITS** the transcripts of the hearing of Évariste Ntakirutimana in *Nyira wasuhuko et al.*;
- IV. **ADMITS** the transcripts of the hearing of Évariste Ntakirutimana during the initial trial; and
- V. **INSTRUCTS** the Registrar to attribute an exhibit number to each of those documentary evidence.

Arusha, 29 January 2009, done in English.


C.M. Dennis Byron
Presiding Judge
