



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ICTR-00-56-T
19-03-2009
(28386 - 28384)

28386
Mwamp

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 19 March 2009

JUDICIAL RECORDS ARCHIVES
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The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

**DECISION ON PROSECUTION'S MOTION FOR RECONSIDERATION OF THE
CHAMBER'S DECISION DATED 18 FEBRUARY 2009**

Office of the Prosecution:

Mr Alphonse Van
Mr Moussa Sefon
Mr Lloyd Strickland
Mr Abubacarr Tambadou
Ms Faria Rekkas

Counsel for the Defence:

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

INTRODUCTION

1. On 18 February 2009 the Chamber rendered a decision denying the Bizimungu Defence's Motion requesting the Chamber to order the Prosecution to, *inter alia*, disclose a Gacaca Court judgement relating to Witness AOE/SDA which was admitted as a sealed exhibit in *Prosecutor v. Ephrem Setako* ("Gacaca Judgement") and to admit into evidence the Gacaca Judgement ("Impugned Decision").¹ In the Impugned Decision the Chamber issued a warning to the Prosecution pursuant to Rule 46(A) of the Rules of Procedure and Evidence ("Rules") for failing to acknowledge possession of the Gacaca Judgement. The Prosecution submitted that the content of the Gacaca Judgement was unknown,² even though it had already been admitted as a sealed exhibit in the *Setako* case and was therefore already in the Prosecution's possession. The Prosecution filed a Motion ("Prosecution Motion"), *inter alia*, requesting the Chamber to reconsider the warning issued in its Impugned Decision.³

DELIBERATIONS

Law on Reconsideration

2. The Chamber notes that reconsideration of a decision is an exceptional measure that is only available in particular circumstances.⁴ Reconsideration is permissible when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original decision; (2) there has been a material change in circumstances since it made its original decision; or (3) there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.⁵ The Chamber recalls that the burden rests with the party seeking reconsideration to demonstrate the existence of sufficiently special circumstances.⁶

3. The Chamber notes that the Prosecution seeks reconsideration of the Impugned Decision in respect of the warning issued to the Prosecution and requests the Chamber to lift

¹ Decision on Bizimungu's Motion for Reparation Following the Prosecution's Failure to Disclose Documents Affecting the Credibility of Prosecution Witness AOE (TC), 18 February 2009.

² See Prosecutor's Ex-Parte Compliance with the Trial Chamber's Decision Dated 18 February 2009 and Motion for Reconsideration for the Said Decision, 23 February 2009, para. 8. See also Réponse du Procureur à la "Requête en vue d'obtenir réparation suite à la violation par le Procureur de son obligation de divulguer des éléments susceptibles de porter atteinte à la crédibilité d'un témoin à charge en vertu des articles 72A) (sic) et 68 RPP et 92D) RPP", filed on 10 December 2008, para. 8.

³ Prosecutor's Ex-Parte Compliance with the Trial Chamber's Decision Dated 18 February 2009 and Motion for Reconsideration for the Said Decision, 23 February 2009 ("Prosecution Motion").

⁴ *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Ntahobali's Motion for Reconsideration of the "Decision on Ntahobali's Motion for Separate Trial" (TC), 22 February 2005, para. 17; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-41-T, Decision on Prosecutor's Second Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)" (TC), 14 July 2004, para. 7; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)" (TC), 15 June 2004, para. 7.

⁵ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza (TC), 29 September 2008, para. 4; See also *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecution Motion for Leave to Vary the Witness List Pursuant to Rule 73bis(E)" (TC), 15 June 2004, para. 9.

⁶ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza (TC), 29 September 2008, para. 4.

the warning for obstruction of proceedings.⁷ The Chamber notes that in the Prosecution Motion the Prosecution has not addressed the criteria for reconsideration, nor has it demonstrated that the criteria for reconsideration have been satisfied.


4. The Chamber finds that the Prosecution has not specifically or clearly identified a new fact or material change in circumstances. The Chamber recalls its finding in the Impugned Decision that the Office of the Prosecutor, which has been held by the Appeals Chamber to be an "undivided unit,"⁸ was in possession of the Gacaca Judgement because it was admitted as a sealed exhibit in *Prosecutor v. Setako*. Therefore the Prosecution's failure to acknowledge possession of the Gacaca Judgement by submitting that its content was unknown amounts to an obstruction of the proceedings. The Chamber finds that the Prosecution has not proved that the warning issued by the Chamber in the Impugned Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.

5. The Chamber finds that the requirements for reconsideration have not been met and therefore dismisses the Prosecution Motion.

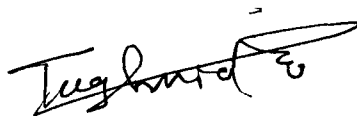

FOR THE ABOVE REASONS, THE CHAMBER


DENIES the Prosecution Motion in its entirety.

Arusha, 19 March 2009, done in English.


Read and approved by
Asoka de Silva

Presiding Judge
Absent at the time of
Signature


Taghrid Hikmet

[Seal of the Tribunal]


Seon Ki Park

Judge

⁷ Prosecution Motion, paras. 8, 12.

⁸ *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005, para. 43.