

ICTR-07-91-T
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(3797-3794)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Aydin Sefa Akay

Registrar: Mr. Adama Dieng

Date: 16 April 2009

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-T

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DECISION ON DEFENCE MOTION FOR JUDICIAL NOTICE

Rule 94 (A) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Richard Karegyesa
Abdoulaye Seye
Dennis Mabura
Marie Ka

For the Accused:

Allison Turner

INTRODUCTION

1. On 23 February 2009, the Defence filed a motion seeking judicial notice of facts that it submits are common knowledge, pursuant to Rule 94 (A) of the Rules of Procedure and Evidence ("Rules").¹
2. The Prosecutor did not respond to the Motion.

DISCUSSION

The Applicable Law

3. Pursuant to Rule 94 (A) a Chamber "shall not require proof of facts of common knowledge but shall take judicial notice thereof."
4. The Appeals Chamber in *Prosecutor v. Semanza*,² following *Prosecutor v. Milošević*,³ explained that:

Rule 94(A) "commands the taking of judicial notice" of material that is "notorious." The term "common knowledge" encompasses facts that are not reasonably subject to dispute: in other words, commonly accepted or universally known facts, such as general facts of history or geography, or the laws of nature. Such facts are not only widely known but also beyond reasonable dispute.⁴

5. Furthermore, as stated by the Trial Chamber in *Prosecutor v. Bizimungu et al.*, "judicial notice should not be taken of facts which are controversial or which are the subject of disputed interpretation."⁵
6. Rule 94 (A) is not discretionary. Rather, when a Trial Chamber determines a fact to be "of common knowledge", it must take judicial notice of it and cannot require it to be proved through evidence at trial.⁶ A Trial Chamber should not, however, take judicial notice of a fact of common knowledge that is not relevant or not probative.⁷ The Appeals Chamber in *Semanza* affirmed that Rule 94 cannot be used to "circumvent the ordinary requirement of relevance" and concluded that it was correct to apply the relevance requirement of Rule 89

¹ Nshogoza, "Defence Motion for Judicial Notice," filed 23 February 2009 ("Motion").

² *The Prosecutor v. Semanza*, Case No. ICTR-97-20-A, Judgment (AC), 20 May 2005, ("*Semanza* Appeal Judgment").

³ *The Prosecutor v. Milosevic*, Case No. IT-02-54-AR73.5, Decision on the Prosecution's Interlocutory Appeal Against the Chamber's 10 April 2003 Decision on Prosecution's Motion for Judicial Notice of Adjudicated Facts (AC), 28 October 2003 ("*Milosevic* Appeal Decision").

⁴ *Semanza* Appeal Judgment, para. 194 (citing the *Milosevic* Appeal Decision, p. 4).

⁵ *The Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-I, Decision on the Prosecution's Motion for Judicial Notice Pursuant to Rules 73, 89 and 94 (TC), 2 December 2003, para. 24.

⁶ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-48-AR73, Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice (AC), 16 June 2006 ("*Karemera* Appeal Decision"), para. 23; *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosecutor's Motion for Judicial Notice (TC), 22 September 2006, para. 6.

⁷ *Semanza* Appeal Judgment, para. 189. See also, *The Prosecutor v. Kajelijeli*, Case No. ICTR-98-44A-T, Decision on the Prosecutor's Motion for Judicial Notice Pursuant to Rule 94 of the Rules (TC), 16 April 2002, para. 8.



(C) in addition to the considerations of Rule 94 (A),⁸ although the discretionary power granted by Rule 89 (C) does not apply to “facts of common knowledge”.⁹

The Defence's Proposed Fact

7. The Defence has moved the Chamber to take judicial notice of the fact that:

2,000 Franc notes were only introduced into circulation in Rwanda in 2007.¹⁰

8. The Defence submits that this proposed fact falls into the ‘commonly accepted’ category proposed by the Appeals Chamber in *Semanza* and therefore the Chamber must take judicial notice of it, pursuant to Rule 94 (A). The Defence motion also contained annexed documents in support of the proposed fact. These documents include a print off from a bank note news website, which specialises in news on currencies around the world, that includes a post dated 23 December 2007 noting the introduction of the 2,000 Franc note in Rwanda;¹¹ and a press release from NumisMaster.com that includes a sentence noting the introduction of the 2,000 Franc bank note in Rwanda in June 2007.¹² The Defence motion also footnotes news items from a news agency in Kigali announcing the new 2,000 Franc note,¹³ and a Rwandan informational website that notes that the 2,000 Franc note was introduced in December 2007.¹⁴

Deliberations

9. The Chamber finds that the fact is relevant and of probative value to the current proceedings as it relates to the testimony of Witness GAA who testified that the Accused had given notes of 2,000 Francs to another witness at meetings that took place prior to 2007.¹⁵ Thus it satisfies the requirements of Rule 89 (C).

10. The Chamber considers that the proposed fact falls within the ‘commonly accepted’ category of facts proposed in *Semanza*. That Rwanda only began issuing 2,000 Franc notes in 2007 is part of the history of the Rwandan currency and cannot be reasonably disputed. It is of the nature of facts such as the date of Rwanda’s accession to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), which has been accepted under Rule 94 (A) previously.¹⁶ These are facts of common knowledge inasmuch as they are historical, verifiable facts that are beyond reasonable dispute.

11. Therefore, pursuant to Rule 94 (A), the Chamber will take judicial notice of the fact that Rwanda began issuing 2,000 Franc notes in 2007.¹⁷

⁸ *Semanza* Appeal Judgment, para. 189.

⁹ *Karemera* Appeal Decision, para. 23. While the Trial Chamber has discretion, under Rule 89 (C), to deny the admission of evidence, it does not have the discretion to deny the admission of a fact which is relevant and has probative value once it has determined that it is a fact of common knowledge under Rule 94 (A).

¹⁰ Motion, p. 5.

¹¹ Motion, Annexure A, “*Rwanda issues first-ever 2,000-franc note.*”

¹² Motion, Annexure A, “*NUMISMASTER.com.*”

¹³ Motion, p. 2.

¹⁴ Motion, p. 2.

¹⁵ *Nshogoza*, T. 16 February 2009, p. 46.


¹⁶ *Karemera* Appeal Decision, para. 192.

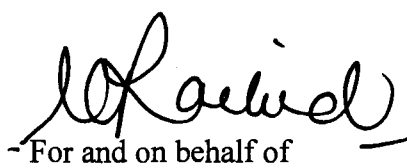
¹⁷ *Karemera* Appeal Decision, para. 23.

FOR THESE REASONS, the Chamber

GRANTS the Defence Motion and takes judicial notice that the Rwandan 2,000 Franc note was introduced into circulation in Rwanda in 1997.

Arusha, 16 April 2009


Khalida Rachid Khan
Presiding Judge


- For and on behalf of
Lee Gacuiga Muthoga
Judge


Aydin Sefa Akay
Judge

[Seal of the Tribunal]

