

ICTR-07-91-T
16-4-2009
(3801-3798)

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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

JUDICIAL RECORDS ARCHIVES
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16/04/2009

THE PROSECUTOR

v.

Léonidas NSHOGOZA

Case No. ICTR-07-91-T

DECISION ON DEFENCE MOTION FOR THE TRIAL CHAMBER TO TAKE
JUDICIAL NOTICE OF THE VALUE OF THE RWANDAN CURRENCY

Rules 89 (C) and 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 7 April 2009 the Defence filed a Motion requesting that the Trial Chamber take judicial notice of the value of the Rwandan currency at the time relevant to the events in the Indictment, 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) of the Rules, a Trial 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 irrelevant or not probative.⁷ The Appeals Chamber in *Semanza* affirmed that Rule 94 cannot be used to "circumvent the ordinary requirement of relevance"

¹ *Nshogoza*, "Defence Request that the Trial Chamber Take Judicial Notice of the Value of Rwandan Currency," filed 7 April 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.



and concluded that it was correct to apply the relevance requirement of Rule 89 (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 of:

The value of the Rwandan Franc at the time relevant to the events in the Indictment, and its current value.¹⁰

8. The Defence submits that this fact falls into the 'commonly accepted' category proposed by the Appeals Chamber in *Semanza* and that the Chamber must, therefore, take judicial notice of it, pursuant to Rule 94 (A) of the Rules. The Defence states that the value of the Rwandan Franc as against the United States Dollar is empirically discernible, not open to dispute and can be easily confirmed.¹¹ The Motion also contains annexes with the relevant values of the Rwandan Franc as against the United State Dollar during the years 2004 and 2005.¹²

9. The Defence asserts that the value of the Rwandan Franc relative to the United States Dollar is a relevant fact as it establishes the true value of the Rwandan Franc, and supports the Accused's testimony that the money he gave to Witnesses GEX and GAA after their meetings with him were nominal amounts that were meant to compensate the witnesses for their travel expenses and loss of a day.¹³

Deliberations

10. Rule 89 (C) of the Rules requires that all evidence admitted by the Chamber be relevant and have probative value. Facts of common knowledge are no exception. Though a Chamber cannot require that such facts be proved by evidence, a Chamber should not take judicial notice of a fact that is not relevant or probative.¹⁴

11. The Chamber considers that the relative value of Rwandan Francs to United States Dollars is not relevant to these proceedings and has no probative value in relation to the charges against the Accused. The relevant consideration, rather, is the value of the Rwandan Franc to the recipients, not its value in a different currency. The value of the payments to the recipients living in Rwanda, and whether it was equivalent to the witnesses' expenses arising from their meetings with the Accused, cannot be ascertained through the value of the Rwandan Franc in United States Dollars. Thus, the Chamber finds that the requested fact does not meet the requirements of relevance or probative value set out in Rule 89 (C).

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. 4.

¹¹ Motion, para. 8.

¹² Motion, Annexures A and B.

¹³ Motion, paras.2, 4.


¹⁴ *Karemera* Decision (AC), fn. 32; *Semanza* Appeal Judgment, para. 189.

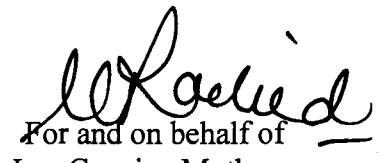


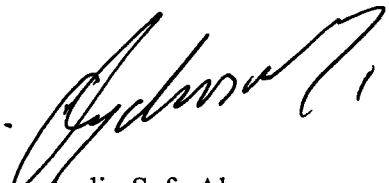
FOR THESE REASONS, the Chamber

DENIES the Defence Motion.

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]

