



UNITED NATIONS  
NATIONS UNIES

ICTR-07-91-T  
23-04-2009  
(4034 - 4031)

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**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:** 23 April 2009

**THE PROSECUTOR**

v.

**Léonidas NSHOGOZA**

**Case No. ICTR-07-91-T**

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON DEFENCE MOTION FOR THE ADMISSION OF TRANSCRIPTS  
PURSUANT TO RULE 92BIS**

*Rules 73 and 92 bis (D) 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

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1. On 2 April 2009, the Defence filed a Motion seeking the admission of a transcript extract from the *Prosecutor v. Karemera et al.* proceedings,<sup>1</sup> pursuant to Rule 92bis (D) of the Rules of Procedure and Evidence (“Rules”).<sup>2</sup> The portion of the transcript for which admission is sought contains testimony by Witness AMN regarding reimbursement for travel expenses.<sup>3</sup>
2. The Prosecutor did not respond to the Motion.

## DISCUSSION

*The Applicable Law*

3. Rule 92bis (D) of the Rules bestows a discretionary power upon a Trial Chamber to admit, in whole or in part, “a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused”.
4. The meaning of the term “acts and conduct of the accused” has been defined by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”), which noted that the term is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused himself and not the acts and conduct of his co-perpetrators and/or subordinates.<sup>4</sup>
5. Once a Chamber is satisfied that the threshold requirement of Rule 92bis has been met, its discretion to admit the transcript of evidence is enlivened. To qualify for admission under Rule 92bis, the general requirements of relevance and probative value under Rule 89 (C) must also be satisfied.<sup>5</sup> Further, the exercise of a Chamber’s discretion under Rule 92bis

<sup>1</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T.

<sup>2</sup> *Nshogoza*, “Defence Motion for the Admission of Transcripts Pursuant to Rule 92bis,” filed 2 April 2009 (“Motion”).

<sup>3</sup> Motion, para. 5, Annexure.

<sup>4</sup> *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution’s Request to have Written Statements Admitted Under Rule 92 bis (TC), 21 March 2002, para. 22 (cited in *Prosecutor v. Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis (C) (AC), 7 June 2002, fn. 28, in support of the Appeals Chamber’s statement of principle, at paragraph 10 of its Decision, that the term “acts and conduct of the accused as charged in the indictment” does not refer to the acts and conduct of others for which the accused is charged in the indictment with responsibility).

<sup>5</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor’s Motion for the Admission of Written Witness Statements under Rule 92 bis, 9 March 2004, para. 16; *Galić* Decision, para. 13. Rule 89 (C) of the Rules provides that a “Chamber may admit any relevant evidence which it deems to have probative value.” The Chamber therefore has a broad discretion to admit any evidence which it deems to be relevant and of probative value. For the purpose of admission pursuant to Rule 89 (C), a document will be considered relevant if it can be established that there is a connection between the evidence and one or more allegations against the Accused in the Indictment. In order to have probative value, evidence must tend to prove or disprove an issue, and it must be sufficiently reliable. See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-07-91-T, Decision on Casimir Bizimungu’s Urgent Motion for the Exclusion of the Report and Testimony of Deo Sebahire Mbonyinkebe (Rule 89 (C)) (TC), 2 September 2005, paras 10, 14; *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, Decision on Appeal Regarding Statement of a Deceased Witness (AC), 21 July, paras. 20, 24; *Prosecutor v. Jean De Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Decision on Kamuhanda’s Motion to Admit Evidence Pursuant to Rule 89 of the Rules of Procedure and Evidence (TC), 10 February 2003, para 10; *Prosecutor v. Edouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion to Admit Documents Authored by Enoch Ruhigira (TC), 26 March, 2008, para. 3



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must be governed by the right of the Accused to a fair trial, as provided for in Articles 19 and 20 of the Statute.<sup>6</sup>

6. Additionally, under Rule 92bis (E), the Chamber has the discretion to admit, in whole or in part, the evidence of a witness in the form of a transcript in lieu of oral testimony, and to decide whether to require the witness to appear for cross-examination.

*Should the Transcript be Admitted into Evidence?*

7. The Defence seeks to have a portion of Witness AMN's testimony from the *Karemera et al.* case admitted into evidence in these proceedings. Witness AMN testified that he was given 10,000 Rwandan francs during a meeting with a Counsel he identified as being from the Office of the Prosecutor.<sup>7</sup>

8. According to the Defence, Witness AMN's testimony in *Karemera* should be admitted into evidence in these proceedings because it relates to the reimbursement of transportation costs of a potential witness. The Defence submits that the evidence supports its assertion that paying potential witnesses for travel expenses is an acceptable practice.<sup>8</sup>

9. The Chamber is satisfied that these portions of the transcript do not go to proof of the acts or conduct of the Accused as they relate to reimbursement of transportation costs to Witness AMN by someone other than the Accused.

10. The Chamber considers that evidence of an alleged payment by a representative of the Office of the Prosecutor to a witness or potential witness is relevant to the allegations in the Indictment that payments made by the Accused to witnesses were bribes. However, the Chamber notes that in the excerpt relied upon by the Defence, when Prosecution Counsel asked the witness if he was the one who gave the witness the money, the witness responded "no, it was another lady accompanying you who gave me the money...."<sup>9</sup> The identity of this individual is not clear. However, these are factors for the Chamber to consider when assessing the weight to be accorded to the transcript when considering the totality of the evidence.<sup>10</sup>

11. The Chamber considers that the transcript excerpt which the Defence seeks to have admitted into evidence is relevant and has probative value and meets the requirements for admission into evidence under Rule 92bis (D) of the Rules.

12. With regard to cross-examination, the Chamber notes that the Prosecutor did not respond to object to the admission of the transcript into evidence and considers that cross-

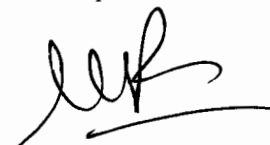
<sup>6</sup> *Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Defence Motions for the Admission of Testimony Given by Prosecution Witness GFA before the *Karemera et al.* Chamber, 26 September 2008, paras. 10 – 11; *Bizimungu et al.*, Rule 92 bis Decision, para. 20; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92 bis (TC), 9 March 2004, para. 12.

<sup>7</sup> Motion, Annexure: *Karemera et al.*, T., 1 October 2007; pp. 49, 56.

<sup>8</sup> Motion, paras 5-8.

<sup>9</sup> Motion, Annexure: *Karemera et al.*, T. 1 October 2007, p. 50. It is not clear from the transcript excerpt whether or not the woman identified by the witness as having given him money was a Prosecution Counsel.

<sup>10</sup> *Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC) 4 October 2004, para. 7.



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examination of the witness is not necessary in this instance. Accordingly, the Chamber admits the transcript excerpt without requiring the Witness to appear for cross-examination by the Prosecutor.

**FOR THESE REASONS**, the Chamber

**GRANTS** the Motion; and hereby

**ADMITS** the transcript excerpt annexed to the Motion into evidence, pursuant to Rules 92bis (D); and

**DIRECTS** the Registry to assign the document an exhibit number.

Arusha, 23 April 2009



Khalida Rachid Khan  
Presiding Judge



For and on behalf of  
Lee Gacuiga Muthoga  
Judge



Aydin Sefa Akay  
Judge

[Seal of the Tribunal]

