



UNITED NATIONS
NATIONS UNIES

ICTR-55A-R73
27-04-2009
(710-708)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Vagn Joensen
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 27 April 2009

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-R73

**DECISION ON DEFENCE MOTION FOR RECONSIDERATION
OF THE DECISION ADMITTING THE EXPERT EVIDENCE
OF ÉVARISTE NTAKIRUTIMANA**

Rule 73 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.¹ The Defence did not respond to the Motion within the five days prescribed by Rule 73(E) of the Rules of Procedure and Evidence. On 17 December 2008, the Chamber invited the Defence to file any response to the First Motion by 19 December 2008. Still the Defence did not respond to the Motion, but instead filed on 19 December 2008 a Motion to strike the expert witness.² On 14 January 2009, the Chamber denied the Defence Motion to Strike.³
2. During the same session on 14 January 2009, the Chamber ordered the Prosecution to correct its motion for the admission of the expert evidence, and to resubmit it within 24 hours. On 15 January 2009, the Prosecutor complied, filing the corrected motion.⁴ The Defence did not respond.
3. On 29 January 2009, the Chamber granted the Prosecution's Corrected Motion and admitted the expert evidence of Évariste Ntakirutimana.⁵ In the Decision, the Chamber referred to the fact that the Defence did not respond to the Motion.

DELIBERATIONS

4. The Chamber has the inherent power to reconsider its decisions when: (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or

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

² Accused Tharcisse Muvunyi's Motion to Strike Prosecution Expert Witness ("Motion to Strike"), filed on 19 December 2008.

³ T. 14 January 2009, p. 5: "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."

⁴ The Prosecutor's Motion for the Admission of Expert Witness Testimony Pursuant to Rules 54, 73 and 92bis, 15 January 2009 ("Corrected Motion").

⁵ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A, Decision Admitting the Expert Evidence of Evariste Ntakirutimana (TC), 29 January 2009 ("Decision of 29 January 2009").

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constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby warranting the exceptional remedy of reconsideration.⁶


5. The Defence seeks reconsideration of the Decision of 29 January 2009, claiming that it did respond to the Prosecution's Corrected Motion through its submissions dated 19 December 2008, and that the Chamber failed to consider that filing. However, the Chamber notes that the Motion to Strike does not respond to the Prosecution's motion for admission of expert witness testimony, but is aimed at having the expert witness removed from the Prosecution's witness list. The First Motion that the Defence was invited to respond to was for admission, pursuant to Rule 92 *bis*, of expert testimony that had been admitted in the previous trial of Tharcisse Muvunyi. The Prosecution has only listed the expert on its witness list so that he may be available should the Defence wish to cross-examine him on his testimony from the original trial.

6. Accordingly, the Chamber finds that the Defence did not respond to either Prosecution Motion, neither the First Motion, nor the Corrected Motion. Therefore there is no new circumstance which could lead to any reconsideration, and the motion falls to be dismissed.


FOR THESE REASONS, THE CHAMBER

DENIES the Defence motion in its entirety.

Arusha, 27 April 2009, done in English.


Dennis C.M. Byron
Presiding Judge


Vagn Joensen
Judge


Gberdao Gustave Kam
Judge



⁶ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T Decision on Joseph Nzirorera's Motion to Reconsider the Warning Issued to Co-Counsel (TC), 8 September 2008, para. 4; *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-AR72, Decision (Motion for Review or Reconsideration) (AC), 12 September 2000;