



UNITED NATIONS  
NATIONS UNIES

192-07-91-T  
29-4-2009  
4058-4049  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

4058  
2009  
4

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Mr. Adama Dieng

**Date:** 29 April 2009

**THE PROSECUTOR**

v.

**Léonidas NSHOGOZA**

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

2009 APR 29 P 6: 18  
JUDICIAL RECORDS ARCHIVE  
RECEIVED  
29/04/09

**DECISION ON DEFENCE MOTION FOR THE ADMISSION OF WRITTEN  
STATEMENTS OF WITNESSES A1, A13, A14, A15, A17, A18, A20, A22, A23, A26,  
A28 AND A30 AS EVIDENCE *IN LIEU* OF ORAL TESTIMONY**

*Rules 92 bis 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 16 March 2009, the Defence filed a motion seeking the admission of the written statements of twelve witnesses as evidence, pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence ("Rules").<sup>1</sup> On 30 March 2009, the Defence filed additional submissions in support of the admission of the statement of Witness A20 as well as the admission of copies of two books of *Gacaca* evidence attached to his statement.<sup>2</sup>
2. The statements mainly relate to Prosecution Witness GAA's presence at the Gikomero Parish during the massacres in 1994 and to the credibility of other Prosecution witnesses.
3. The Prosecutor did not respond to the Motion.

## BACKGROUND

4. On 9 and 16 January 2009, the Defence filed a list of witness that contained 40 names.<sup>3</sup> On 28 January 2009, the Chamber ordered the Defence to file a list of the witnesses with a brief summary of anticipated testimony for each witness.<sup>4</sup> On 4 February 2009 the Defence filed a list of witnesses, along with summaries of their anticipated testimony, containing forty-five names. On 12 and 17 February 2009, the Chamber ordered the Defence to reduce its list of witnesses.<sup>5</sup> Ultimately, the Chamber ordered the Defence to reduce its list of witnesses to no more than ten witnesses, in addition to the Accused, who would give oral testimony before the Chamber.<sup>6</sup> The Defence seeks to have the evidence of eleven witnesses on its revised list of witnesses, who were not called to give live testimony, admitted into evidence by way of written statement pursuant to Rule 92 *bis*.

## DISCUSSION

### *The Applicable Law*

5. Pursuant to Rule 92 *bis* (A) a Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement, *in lieu* of oral testimony, that goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. To be admitted, the statement must meet the formal requirements set out in Rule 92 *bis* (B), and satisfy the general evidentiary requirements of probative value and relevance under Rule 89 (C).

<sup>1</sup> *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-T, "Defence Motion for the Admission of Written Witness Statements of Witnesses A1, A13, A14, A15, A17, A18, A20, A22, A23, A26, A28 and A30 as Evidence *in lieu* of Oral Testimony," filed 16 March 2009 ("Motion").

<sup>2</sup> *Nshogoza*, "Additional Submissions to the Defence Motion for the Admission of 92 *bis* Witness Statements," filed 30 March 2009 ("Additional Submissions").

<sup>3</sup> *Nshogoza*, "Defence Strictly Confidential, *Ex Parte* and Under Seal Filing," filed 9 January 2009; *Nshogoza*, "Defence Further Strictly Confidential, *Ex Parte* and Under Seal Filing," filed 16 January 2009.

<sup>4</sup> *Nshogoza*, Order for the Defence to File a Summary of Anticipated Witness Testimony, 28 January 2009.

<sup>5</sup> *Nshogoza*, *Ex Parte* Order for the Defence to Reduce its List of Witnesses, 12 February 2009; *Nshogoza*, *Ex Parte* Order for the Defence to Further Reduce its List of Witnesses, 17 February 2009.

<sup>6</sup> *Nshogoza*, Further Order for the Defence to Reduce its List of Witnesses, 23 February 2009; *Nshogoza*, Decision on Defence Motion for Reconsideration of the Chamber's Further Order for the Defence to Reduce its Witness List, 26 February 2009.

6. The meaning of the term “acts and conduct of the accused as charged in the indictment” 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: that is, it includes deeds and behaviour of the accused himself, as well as his state of mind,<sup>7</sup> but not the acts and conduct of his co-perpetrators and/or subordinates.<sup>8</sup>

7. The Tribunal’s jurisprudence does not draw a distinction between whether the material sought to be admitted goes to prove or disprove acts and conduct of the accused. Indeed, material tending to contradict evidence that the accused carried out certain acts has been held to relate to “proof of the acts and conduct of the accused” for the purposes of Rule 92 *bis*.<sup>9</sup>

8. Once a Chamber is satisfied that: (i) the threshold requirement of Rule 92 *bis* – that the material sought to be admitted goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment – has been met, and (ii) the written statement adheres to certain formal requirements as mandated by Rule 92 *bis* (B), its discretion to admit written statements is enlivened. In the exercise of this discretion, a Chamber is guided by the criteria for and against admission, set out in Rule 92 *bis* (A) (i) and (ii), respectively, which are non-exhaustive lists.<sup>10</sup> However, this is not an invitation to tender unnecessarily cumulative or repetitive evidence which would affect the expeditious nature of the proceedings.<sup>11</sup>

9. Rule 92 *bis* (E) establishes an additional discretionary power of the Chamber that allows it to require the witness to appear for cross-examination. Cross-examination shall be granted if the statement touches upon a critical element of the case, or goes to a live and important

<sup>7</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 (“Bagosora Decision”), para 13; *Prosecutor v. Galic*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C), 7 June 2002 (“Galic Decision”), para. 11.

<sup>8</sup> *Prosecutor v. Milosevic*, IT-02-54-T, Decision on Prosecution’s Request to Have Written Statements Admitted under Rule 92 *bis*, 21 March 2002 (“Milosevic Decision”), para. 22; *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Decision on Casimir Bizimungu’s Motion to Vary Witness List; and to Admit Evidence of Witness in Written Form in lieu of Oral Testimony, 1 May 2008 (“Bizimungu Decision”), para. 17.

<sup>9</sup> *Bizimungu et al.*, Decision on Justin Mugenzi’s Motion to Admit Transcript Extracts of General Tomeo Dallaire’s Evidence in the *Ndindiliyama* Proceedings, 4 November 2008, para. 24; *Bizimungu et al.*, Decision on Jerome-Clement Bicamumpaka’s Motion for the Statement of the Deceased Witnesses, Faustin Nyagahima, to be Accepted as Evidence, 30 May 2007, para. 14; *Bagosora* Decision, para 16.

<sup>10</sup> Rule 92 *bis* (A) (i) outlines some factors in favour of admitting evidence in the form of a written statement, for example, where the evidence (a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts; (b) relates to relevant historical, political or military background; (c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates; (d) concerns the impact of crimes upon victims; (e) relates to issues of the character of the accused; or (f) relates to factors to be taken into account in determining sentence.

Rule 92 *bis* (A) (ii) outlines some factors against admitting evidence in the form of a written statement, for example, (a) there is an overriding public interest in the evidence in question being presented orally; (b) a party objecting can demonstrate that its nature and source render it unreliable, or that its prejudicial effect outweighs its probative value; or (c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

<sup>11</sup> *Bagosora* Decision, para. 15; *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, First Decision on Prosecution’s Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92*bis*, 12 June 2003, para. 20.



issue between the parties, as opposed to a peripheral or marginally relevant issue.<sup>12</sup> A relevant factor in exercising this discretion is the proximity to the accused of the person whose acts are described in the statement.<sup>13</sup> Furthermore, the exercise of the Chamber's discretion under Rule 92 *bis* must be governed by the rights of the accused to a fair trial as provided for by Articles 19 and 20 of the Statute of the Tribunal ("Statute").<sup>14</sup>

10. In order for a statement to be admissible, the general requirements of relevance and probative value set out in Rule 89 (C),<sup>15</sup> applicable to all types of evidence, must also be satisfied.<sup>16</sup> Rule 89 (C) of the Rules of Procedure and Evidence ("Rules"), gives the Chamber a broad discretion to admit any evidence which it deems to be relevant and of probative value.<sup>17</sup> The burden of demonstrating that the documents are, *prima facie*, relevant and of probative value rests with the party seeking to have the documents admitted.<sup>18</sup>

*Should the Statements be admitted in lieu of Oral Testimony?*

11. The Chamber notes that the formal requirements pursuant to Rule 92 *bis* (B) have been met by way of attestations attached to all twelve written statements. The Chamber will now consider whether the other requirements for the admission of written statements pursuant to Rule 92 *bis* of the Rules have been met.

*i) A1's Statement*

12. Witness A1 is Kamuhanda's relative. He says that Witness GEX<sup>19</sup> asked him to put her in contact with the Kamuhanda Defence Team. According to the statements, after Witness GEX told Witness A1 that she wanted to recant her statement, Witness A1 contacted Kamuhanda's sister and a meeting between the Accused and Witness GEX was arranged. According to Witness A1, the initiative to meet the Accused came from Witness GEX.<sup>20</sup>

<sup>12</sup> Rule 92 *bis* (E); *Milosevic* Decision, para. 24, *Bizimungu* Decision, para. 19; *Karempera* Decision, para. 4; *Galic* Decision, para. 8.

<sup>13</sup> *Bagosora* Decision, para. 16; *Galic* Decision, para. 13.

<sup>14</sup> *Galic* Appeal para 31, *Bizimungu* Decision, para. 19; *Milosevic* Decision, para. 7.

<sup>15</sup> *Bagosora* Decision, para. 12; *Karempera* Decision, para. 5.

<sup>16</sup> *Bizimungu* Decision, para. 20; *Bagosora* Decision, para. 12; *Karempera* Decision, para. 5; *Milosevic* Decision, para. 6.

<sup>17</sup> *Bizimungu et al.*, 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 ("*Bizimungu* Evidence Decision"), para 10; *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, Decision on Appeal Regarding Statement of a Deceased Witness (AC), 21 July 2000 ("*Kordic* Decision"), para. 20; *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 ("*Karempera* Decision"), para. 3.

<sup>18</sup> *Bizimungu et al.*, 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 ("*Bizimungu* Evidence Decision"), paras. 14-15; *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 ("*Karempera* Decision"), para. 3 (citing *Prosecutor v. Theoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Bagosora Motion to Exclude Photocopies of Agenda (TC), 11 April 2007); *Bagosora et al.*, Decision on Request to Admit United Nations Documents Into Evidence Under Rule 89 (C) (TC), 25 May 2006, para. 2.

<sup>19</sup> This witness is also known as Defence Witness A7 but will be referred to as Witness GEX for the purposes of this decision.

<sup>20</sup> Motion, ("Confidential Annexure")



13. The Accused is charged with contempt of the Tribunal for organizing several meetings with protected witnesses.<sup>21</sup> Witness A1's statement is relevant to (i) proving the charge in the Indictment that the Accused met with protected witnesses, and (ii) disproving the charge in the Indictment that the Accused initiated contact, and organized meetings with protected Witness GEX.<sup>22</sup> The Chamber therefore considers that Witness A1's written statement concerns acts and conduct of the Accused as charged in the Indictment and thus, does not meet the threshold for admission into evidence under Rule 92 *bis* (A).

14. Accordingly, Witness A1's statement is not admissible *in lieu* of oral testimony pursuant to Rule 92 *bis*.

*Remaining Statements - Credibility of Prosecution Witnesses*

15. The Chamber has reviewed the statements and considers that the remainder of the statements primarily relate the credibility of Prosecution Witnesses GAA, GAF, and SP-003 and do not concern the acts and conduct of the Accused as charged in the Indictment. The Chamber considers that its discretion to admit the statements has been enlivened.

16. The Chamber will now consider the admissibility of each of the statements in turn.

*ii) A13's Statement*

17. Witness A13's written statement, relates to the credibility of Witnesses GAA and SP-003. Witness A13 states that she is a Tutsi and that she was living near the school at Gikomero Parish in 1994. According to the statement, Witness A13 knows Witness GAA and Witness SP-003. She says that she was present during the attack on Gikomero Parish, that Witness GAA was not there and that she never heard that he was present. Witness A13 further states that she heard from several people that Witness GAA was in Kibara on 12 April 1994. With respect to Witness SP-003, Witness A13 asserts that he is not a "survivor," but rather he is a Hutu with a Hutu father and a Tutsi mother. According to Witness 13, Witness SP-003 had his father and brothers put in prison.

18. The Chamber is satisfied that the statement is relevant to the credibility of Witnesses GAA and SP-003 and that it has some probative value. In addition, the Chamber has heard testimony from Witnesses A7, A25, A29, Augustin Nyagatare, and Stratton Nyarawara that relate to the credibility of Witness GAA. Thus, testimony is cumulative in nature, which is a factor in support of its admission.

19. The Chamber therefore finds that the statement is admissible under Rule 92 *bis* (A) of the Rules.

*iii) A14's Statement*

<sup>21</sup> *Nshogoza*, Indictment, 7 January 2008 ("Indictment"), paras. 5 and 8.

<sup>22</sup> The Chamber recalls that the Tribunal's jurisprudence does not draw a distinction between whether the material sought to be admitted goes to prove or disprove acts and conduct of the accused. See *Bizimungu et al.*, Decision on Justin Mugenzi's Motion to Admit Transcript Extracts of General Tomeo Dallaire's Evidence in the *Ndindiliyama* Proceedings, 4 November 2008, para. 24; *Bizimungu et al.*, Decision on Jerome-Clement Bicamumpaka's Motion for the Statement of the Deceased Witnesses, Faustin Nyagahima, to be Accepted as Evidence, 30 May 2007, para. 14; *Bagosora* Decision, para 16.

20. Witness A14 states that he was selling beans in Gikomero on 12 April 1994 to, amongst others, Witness GAA's neighbours. According to the statement, if Witness GAA was in Gikomero he would have visited Witness A14 because they knew each other very well. Witness A14 further states that he heard rumours about Olive Mukamazimpaka looking for persons willing to accuse Kamuhanda and that she found Witnesses GAA, GAF and SP-003. The second paragraph of the statement refers to the treatment of witnesses by the Witness and Victims Support Section ("WVSS") and the Rwandan authorities.

21. The Chamber considers that the statement that Witness GAA would have come to visit Witness A14 if he was in Gikomero is presumptive and speculative. The hearsay statement regarding the activities of Olive Mukamazimpaka is relevant to the credibility of Witnesses GAA, GAF and SP-003. However, the Chamber considers that this testimony regarding Witnesses GAA, GAF and SP-003 does not have probative value.

22. Regarding, the portion of the statement that speaks of the Rwandan authorities, the Chamber considers this is not relevant to the current case, and thus is not admissible under Rule 92 *bis* of the Rules.

23. For the reasons outlined above, the Chamber finds Witness A14's statement is not admissible under Rule 92 *bis*.

*(iv) A15's statement*

24. According to Witness A15, who testified on behalf of the Kamuhanda defence, he was an eye-witness to the attack on, and killing of, Witness GAA's relatives during the attack on Gikomero in April 1994. Witness A15 states that he knows Witness GAA very well and that Witness GAA was not at Gikomero, but rather was in Kibara, and according to hearsay, was with one Muhozi. He further states that he did not see Witness GAF at Gikomero as GAF was on the fields beside the Gikomero Parish.

25. The Chamber considers the statement to be relevant to the credibility of Witnesses GAA and GAF, both of whom testified that they were present at Gikomero Parish during the attacks, and that it has probative value.<sup>23</sup>

26. The Chamber is satisfied that the statement meets the requirements for admission under Rules 92 *bis* (A) of the Rules.

*(v) A17's Statement*

27. Witness A17 says that he arrived at Gikomero Parish just before the attack, and he describes his participation in the attack. He also states that he knows Witness GAA, that he did not see Witness GAA during the attack on Gikomero and that he heard that Witness GAA was not there. According to Witness A17, Witness SP-003 denied his Hutu origins, saying that his mother had conceived him with a Tutsi, and put his father and his father's sons in prison.

<sup>23</sup> T. 10 February 2009; T. 16, 17, 18, 19 February 2009.



28. Witness A17's statement relates to the credibility of Witnesses GAA and SP-003. The Chamber is satisfied that the statement is relevant and has probative value.

29. The Chamber therefore finds that the statement is admissible under Rule 92 bis of the Rules.

(vi) A18's Statement

30. Witness A18 states that he was an assailant who participated in the attack on Gikomero Parish, and he describes the events that took place that day. According to Witness A18, he knows Witness GAA very well and their parents are good friends. He also states that he has known Kamuhanda since he was a child and that he knows Kamuhanda's parents as well. Witness A18 says that he did not see Witness GAA during the attack on Gikomero Parish nor did he ever hear of Witness GAA having been present at Gikomero during the attack. He also says that he learned, while in prison, that Witness GAA had gone to Kibara. Additionally, he states that he knows Witness SP-003 but did not see him during the attack on Gikomero, that Witness SP-003 collaborated with both sides of the conflict, and that Witness SP-003 had many people arrested, including his father and his brothers.

31. Witness A18's statement relates to the credibility of Witnesses GAA and SP-003. The Chamber is satisfied that the statement is relevant to the credibility of Witnesses GAA and SP-003 and has probative value.

32. The Chamber therefore finds that the statement is admissible under Rule 92 bis of the Rules.

(vii) A20's Statement

33. Witness A20 identifies himself as president of the *Gacaca* committee for the former *cellule* of Mutokerezwa and states that he maintains the records for the information collected for the cellule. According to his statement, he provided the Defence with two books that provide information regarding the attack on Gikomero Parish on 12 April 1994, photocopies of which are annexed to his statement. He states that the name Kamuhanda is not mentioned in either of the books of evidence about the attack at Gikomero. Further, according to the statement, Witness A20 received a message from Witness GAA that he may have information to contribute regarding the Gikomero events but Witness GAA never showed up and did not participate in the *Gacaca* sessions concerning the attack at Gikomero.

34. In its Additional Submissions, the Defence submits that, although the Chamber denied the Defence request to admit the books into evidence during the testimony of Cyprien Hakizimana on the basis that the authenticity had not been established, the Chamber's concerns about the authenticity should be resolved by the certification made by Witness A20 as part of his 92 bis statement.<sup>24</sup> Further, the Defence submits that the content of the books relates to the credibility of Witness GAA and demonstrates the "physical impossibility of Mr. Nshogoza to commit the acts with which he is indicted."<sup>25</sup>

<sup>24</sup>Nshogoza, Additional Submissions, paras. 3, 6.

<sup>25</sup>Nshogoza, Additional Submissions, para. 4. The Defence makes no further submissions to support this assertion that the books are relevant and probative.



35. The Chamber considers that the portion of the statement relating to Witness GAA's participation in the *Gacaca* hearings, is of little assistance to the Chamber. Further, the Chamber is not satisfied that the photocopies of evidence from the *Gacaca* proceedings are relevant and have probative value in relation to the charges against the Accused in these proceedings.

36. Thus, the Chamber finds that the statement is not admissible under Rule 92 *bis* of the Rules.

*(viii) A22's Statement*

37. Witness A22 says that he is a farmer and the president of the *Gacaca* Appeals Court for the Gikomero Sector. Witness A22 says that through his role in *Gacaca* proceedings, he has come to learn about who was responsible for the Gikomero attack. He states that he never heard from anyone that Kamuhanda participated in the Gikomero massacre and Biserurande was found guilty of leading the Gikomero attack. According to Witness A22, he has known GAA since 1994 and he never heard that Witness GAA was present during the Gikomero attack, Witness GAA never told Witness A22 that he was there, nor Witness GAA contribute to the *Gacaca* process. Finally, Witness A22 asserts, based on rumours, that the accusations against Kamuhanda are the work of Olive Mukamazimpaka.

38. The Chamber considers that the statement is relevant to Witness GAA's credibility but that it does not have probative value. That Witness GAA did not tell Witness A22 that he was at Gikomero, and did not contribute to the *Gacaca* hearings is of little assistance to the Chamber in assessing Witness GAA's credibility. Further, the witness's opinion regarding the basis of the accusations against Kamuhanda are speculative and do not tend to prove or disprove the charges against the Accused in the Indictment.

39. For the above reasons, the Chamber exercises its discretion not to admit the statement into evidence.

*(ix) A23's Statement*

40. He states that he was present during the attack on Gikomero Parish on 12 April 1994 and he describes the events he witnessed. According to the statement, Witness A23 knows Kamuhanda, Witness GAF, Witness SP-003 and Witness GAA, as well as Witness GAA's family. He says that neither Witnesses GAF nor GAA were present during the Gikomero Parish attack. Witness A23 further states that Witness SP-003 was a thief, and that he became responsible for his cellule and had several people arrested.

41. This statement is relevant to the credibility of Witnesses GAF, SP-003 and GAA. As Witness A23 says he knows the three witnesses, and that he was present at Gikomero, the Chamber considers that the statement has probative value with respect to the credibility of these witnesses. Accordingly, the Chamber considers that the statement should be admitted into evidence.

*(x) A26's Statement*

42. Witness A26 identifies himself as the first vice-president of the *Gacaca* for Motukerezwa. He states that he was not an eye-witness to the attack on Gikomero Parish but





makes his statement based on information he has gathered. According to Witness A26's information, Biserurande was found to have participated in the Gikomero attack and Kamuhanda's name never arose in relation to the attack. Furthermore, he says that Witness GAA did not participate in the *Gacaca* hearings although he was expected to appear to make claims in respect of his cows. Witness A26 also makes various statements about Witness GAA's credibility, based primarily on hearsay. Finally, Witness A26's makes statements about the personal and professional background of Witnesses SP-003 and GAF, including that the brothers and father of Witness SP-003 went to prison, and that Witness GAF did not make any claims for the loss of cows.

43. Witness A26's statement relates to the presence of Witness GAA at Gikomero and the credibility of Witnesses GAF and SP-003.

44. The Chamber considers that the statements regarding Witness GAA's failure to participate in the *Gacaca* process and the rumours about Witness GAA's credibility do not have probative value. In addition, in relation to Witnesses GAF and SP-003 the Chamber considers that the statement does not have probative value.

45. Given the above, the Chamber considers that the statement of Witness A26 is not admissible.

*(xi) A28's Statement*

46. Witness A28 states that he is the president of the *Gacaca* committee of Kareyshya in Kibara and that he knows Witness GAA. According to his statement, Witness GAA was with a relative of Witness A28 in Kibara from 9 April until 11 April 1994, and he personally saw Witness GAA in Kibara during that time. Witness A28 states that on 11 April 1994, Witness GAA left Kibara with one Muhozi to cross the lake and that Witness subsequently A28 learned that Witness GAA had indeed crossed the lake. Further, Witness A28 asserts that Witness GAA claimed the loss of cows which did not belong to him. Finally, the statement also speaks to the credibility of Witness SP-003, identifying him as a thief and as having put his father in prison.

47. This statement relates to the credibility of Witnesses GAA and SP-003.

48. The Chamber therefore considers that Witness A28's statement is relevant and has probative value in relation to the credibility of Witness GAA. The Chamber finds that the statement is admissible under Rule 92 *bis* of the Rules.

*(xi) A30's Statement*

49. Witness A30's states that on the day before the Gikomero attack he saw Witness GAA on Karasira beach with one Muhozi. Additionally, he claims that after the war Witness GAA went back to Kibara to claim cows and publicly threatened and accused people of stealing his cows.

50. The Chamber is satisfied that the statement by Witness A30 is relevant and has probative value in respect of Witness GAA's credibility.

51. The Chamber finds that this statement is admissible under Rule 92 *bis* of the Rules.



**FOR THESE REASONS**, the Chamber

**GRANTS** the Motion in part, and

**DIRECTS** the Registrar to admit into evidence under seal, the written statements of Witnesses A13, A15, A17, A18, A23, A28 and A30 pursuant to Rule 92 *bis* of the Rules; and

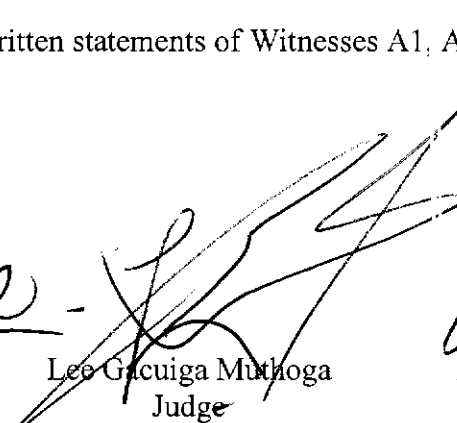
**FURTHER DIRECTS** the Registrar, accordingly, to assign each of these statements an exhibit number; and

**DENIES** the admission of the written statements of Witnesses A1, A14, A20, A22 and A26.

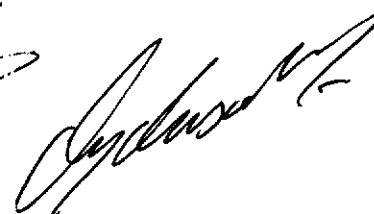
Arusha, 29 April 2009



Khalida Rachid Khan  
Presiding Judge



Lee Gacuga Muthoga  
Judge



Aydin Sefa Akay  
Judge

