

ICTR-00-56-T
19 - 06 - 2009
(30122 - 30119)

30122
Mwanja



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER II

Before Judges: Asoka de Silva, Presiding
Taghrid Hikmet
Seon Ki Park

Registrar: Adama Dieng

Date: 19 June 2009

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

JUDICIAL AUTHORITY
2009 JUN 19 A 9:57

**DECISION ON NZUWONEMEYE'S MOTION OPPOSING THE CORRIGENDUM
TO THE PROSECUTION CLOSING BRIEF**

Office of the Prosecution:
Mr. Alphonse Van
Mr. Moussa Sefon
Mr. Lloyd Strickland
Mr. Abubacarr Tambadou
Ms. Faria Rekkas

Counsel for the Defence:
Mr. Gilles St-Laurent and Mr. Benoît Henry **for Augustin Bizimungu**
Mr. Christopher Black and Mr. Vincent Lurquin **for Augustin Ndindiliyimana**
Mr. Charles Taku and Ms. Beth Lyons **for François-Xavier Nzuwonemeye**
Mr. Fabien Segatwa and Mr. Seydou Doumbia **for Innocent Sagahutu**

INTRODUCTION

1. On 4 December 2008, the Chamber issued a Scheduling Order which required the Parties to file their Closing Briefs not later than 4 December 2008. In addition, the Chamber directed the Parties to exercise due diligence in their filings so as to avoid the need for corrigenda that would delay the translation process. The Registry was directed to translate all the Briefs by 29 May 2009.¹
2. The Prosecution and all the Defence teams filed their Closing Briefs on 31 March 2009 as directed.
3. On 1 June 2009, the Prosecution filed a corrigendum to its Closing Brief.² On 4 June 2009, Nzuwonemeye filed the current Motion requesting the Trial Chamber not to accept the Prosecution Corrigendum.³ The Defence submits that the Prosecution filed its Corrigendum without leave of the Chamber after the expiry of the date stipulated for filing the Closing Briefs and that the proposed Corrigendum seeks to introduce substantive changes to the Closing Brief filed on 31 March 2009. Therefore, Nzuwonemeye submits that if accepted, the proposed Corrigendum would cause prejudice to his defence.
4. In its Response filed on 10 June 2009, the Prosecution submits that neither the Statute nor the Rules require it to seek leave from the Chamber before filing a Corrigendum. The Prosecution further submits that Nzuwonemeye's Defence has not cited any legal authority to support its arguments to the contrary, and that the proposed Corrigendum seeks to correct typographical and punctuation errors which do not affect the substance of the Closing Brief.⁴

DELIBERATIONS

5. The Chamber has reviewed the Prosecution Corrigendum in light of the originally filed Closing Brief and considered the submissions of the Parties. In particular, the Chamber notes the Prosecution submission that there is no provision in the Statute or the Rules which requires it to seek leave to file a Corrigendum. The Chamber reminds the Prosecution that the Scheduling Order of 4 December 2008 was filed pursuant to Rule 54 of the Rules which, *inter alia*, confers discretion on the Chamber to issue such orders as it deems necessary for

¹ Scheduling Order, 4 December 2008, paras. (A) and (B).

² *Corrigendum au Memoire Final du Procureur*, 1 June 2009.

³ Nzuwonemeye Motion to Oppose the Prosecution Corrigendum filed on 1st June 2009, 4 June 2009.

⁴ *Réponse du Procureur à "Nzuwonemeye Motion to Oppose the Prosecution Corrigendum filed on 1st June 2009"*, 10 June 2009.

the conduct of the trial. It follows that where a Rule 54 Order stipulates a time limit within which Parties must do an act, a non-compliant Party must first seek leave from the Chamber before doing such act outside the time limit prescribed. The Chamber therefore disagrees with the Prosecution that it was not required to seek leave to file the Corrigendum.

6. However, the mere fact that the Prosecution failed to seek leave will not prevent the Chamber from considering the proposed Corrigendum. Consistent with its overarching obligation to seek the truth about the allegations in the Indictment and to do justice, the Chamber will examine the proposed Corrigendum to determine whether its contents alter the substance of the original Closing Brief and therefore cause prejudice to any of the Accused persons or whether the suggested changes seek to correct typographical errors and therefore enhance the clarity of the Closing Briefs.
7. In two recent Decisions on a similar issue, the Chamber admitted certain Corrigenda after finding that they correct typographical errors or add clarity to the original text, do not affect the substance of the original documents filed, and do not cause prejudice to the other Parties.⁵
8. In determining whether to accept the proposed Corrigendum, the Chamber will bear in mind the standards enunciated in the above decisions. Having reviewed the proposed Corrigendum in full, the Chamber finds that a significant proportion of the changes proposed by the Prosecution relate to typographical, syntactic, and punctuation errors that do not affect the substance of the Prosecution Closing Brief as filed. In fact, the cumulative effect of the changes is to substantially enhance the clarity and precision of the Closing Brief.
9. With respect to the proposed amendment to paragraph 1131 of the Closing Brief, the Defence submits the proposed Corrigendum altered the substance of the Prosecution Closing Brief with regards to Witness UKL's testimony. The Chamber notes that in Paragraph 1131 of the original Closing Brief, the Prosecution states that Witness UKL testified that he worked in a certain professional capacity at the *Centre hospitalier de Kigali (CHK)* until "May 1991". However, in the proposed Corrigendum, the Prosecution indicates that Witness UKL testified that he worked at the CHK until "May 1994". The Chamber does not believe that by this proposed change, the Prosecution intends to alter the substance of Witness UKL's testimony. On the contrary, the Chamber finds that the Corrigendum contains a typographical error. This finding with respect to the exact period of Witness UKL's employment at the CHK, is supported by a review of the transcript of Witness UKL's testimony wherein the witness

⁵Decision on Nzuwonemeye's Request to file a Corrigendum to his Closing Brief, 7 May 2009, para. 3; Decision on Bizimungu's Request to File a Corrigendum to his Closing Brief, 28 May 2009, para. 3.

clearly states that he worked at the CHK until "May 1994".⁶ Therefore the Chamber accepts the Corrigendum with respect to paragraph 1131 of the original Closing Brief and directs that the words "May 1991" should be read as "May 1994."

10. Regarding the proposed changes to paragraphs 1132 and 1210 of the Prosecutor's Closing Brief, the Chamber finds that the above changes do not alter the essence of Witness UKL's testimony that while working at the CHK, he never noticed that patients had disappeared, or that soldiers had raped or maltreated women at the Maternity ward. The Chamber concludes that the proposed changes to the above paragraphs do not amount to substantive changes to the Closing Brief that could cause prejudice to Nzuwonemeye's Defence and therefore accepts this aspect of the proposed Corrigendum.

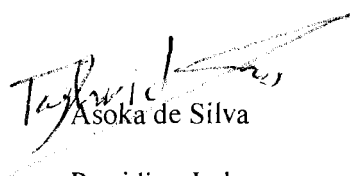
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence request in its entirety;

DIRECTS the Registry to accept the Prosecution Corrigendum as properly filed.

Arusha, 19 June 2009, done in English.

Read and Approved by


Asoka de Silva

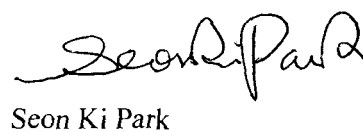
Presiding Judge
Absent at the time of
Signature


Taghrid Hikmet

Judge

[Seal of the Tribunal]




Seon Ki Park

Judge

⁶ T. 30 June 2008, p58 (ICS).