

ICTR-00-56-T
06 - 07 - 2009
(30140 - 30139)

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Uwanja



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 6 July 2009

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

JUDICIAL REVIEW
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INTERIM ORDER FOR *EX PARTE* DISCLOSURE OF CONTESTED DOCUMENT

Office of the Prosecution:

Mr Alphonse Van
Mr Moussa Sefou
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. The evidence in this case was completed on 18 February 2009 after four and one half years of trial. Closing arguments were heard from 24-26 June 2009.

2. On 26 June 2009, the Defence for Bizimungu submitted a Motion alleging that the Prosecution has in its possession a particular document contradicting the evidence of certain Prosecution witnesses, which was not duly disclosed in violation of the Prosecution's disclosure obligations set out in Rule 68 of the Rules.¹

3. The Prosecution opposes the Motion and states that the document in question is not exculpatory in accordance with Rule 68 of the Rules. The Prosecution further submits that the Defence has not shown that it has been prejudiced by the Prosecution's failure to disclose the document. The Prosecution states that its submission is without prejudice to the official translation of the document.²

DELIBERATIONS

4. The Chamber notes that the Prosecution has previously been found to have breached its disclosure obligations pursuant to Rule 68 of the Rules.³ The Chamber is not satisfied that the Prosecution has reviewed the document to determine whether it is exculpatory within the meaning of Rule 68 since it has not been officially translated. Given the seriousness of the Prosecution's obligation to disclose exculpatory material, the Prosecution's history of disclosure violations in this case, and the late stage of the proceedings, it is the Chamber's view that a review of the contested document is warranted in order to make a proper determination of the Defence Motion.

FOR THE ABOVE REASONS, THE CHAMBER

ORDERS the Prosecution to file the contested document, numbered K0459316-K0459324, to the Chamber ex parte with an official English translation by 13 July 2009;

DIRECTS the Language Section of the Registry to collaborate with the Prosecution to facilitate the implementation of this Order.

Arusha, 6 July 2009, done in English.

Asoka de Silva
Read and approved by
Asoka de Silva

Presiding Judge

Taghriddin Hikmet
Taghriddin Hikmet

Judge

Seou Ki Park
Read and approved by
Seou Ki Park

Judge



¹ *Requête en extrême urgence de la défense du général Augustin Bizimungu en communication d'éléments de preuve*, filed on 26 June 2009.

² Prosecutor's Response to Augustin Bizimungu's "*Requête en extrême urgence de la défense du général Augustin Bizimungu en communication d'éléments de preuve*", filed on 1 July 2009.

³ See for example, *Ndindiliyimana et. al*, Decision on Defence Motions Alleging Violation of the Prosecutor's Disclosure Obligations Pursuant to Rule 68 (TC), 22 September 2008.

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