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UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-01-73-A
24th September 2009
{636/H – 634/H}

IN THE APPEALS CHAMBER

Before:

Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Carmel Agius

Registrar:

Mr. Adama Dieng

Decision of:

24 September 2009

JUDICIAL ARCHIVES
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PROTAIS ZIGIRANYIRAZO

v.

THE PROSECUTOR

Case No. ICTR-01-73-A

**DECISION ON ZIGIRANYIRAZO'S SECOND MOTION FOR ADMISSION OF
ADDITIONAL EVIDENCE ON APPEAL**

Counsel for Protais Zigiranyirazo:

Mr. John Philpot
Mr. Peter Zaduk
Ms. Fiona Gray
Mr. Kyle Gervais

ICTR Appeals Chamber

Date: 24th September 09
Action: R. Theroz
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Judges, Parties,

Judicial Archives, LAs,
HSS [Signature]

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Alex Obote-Odora
Ms. Christine Graham
Ms. Linda Bianchi
Mr. Ignacio Tredici
Ms. Béatrice Chapaux
Mr. Alfred Orono Orono

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: KOFFI... KUMELI... A... A. FAYDE
SIGNATURE: [Signature] DATE: 24 Sept. 2009

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THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Tribunal", "Appeals Chamber", respectively);

BEING SEIZED of the Motion, filed on 14 September 2009 by Protais Zigiranyirazo, to admit additional evidence on appeal related to the events at Kesho Hill and the Kiyovu Roadblock demonstrating that the road between the Kigali area and Gisenyi Prefecture via Ruhengeri Prefecture was not passable during the relevant period, in particular: (1) an excerpt of the testimony of Bizimungu Defence Witness DE11-4, who testified on 27 November 2007 in the *Ndindiliyimana et al.* Trial ("Exhibit A"); and (2) an excerpt of the *Karera* Trial Judgement ("Exhibit B");¹

NOTING the Prosecution's Response, filed on 18 September 2009, arguing that the Motion is not timely and lacks merit;²

NOTING Mr. Zigiranyirazo's Reply, filed on 23 September 2009;³

RECALLING that the hearing is scheduled for 28 September 2009;⁴

RECALLING the Appeals Chamber's invitation to the parties to discuss, *inter alia*, the feasibility of travel between Kigali and Gisenyi Prefecture via Ruhengeri Prefecture at the relevant times;⁵

RECALLING the Appeals Chamber's invitation to the parties to focus their oral submissions, *inter alia*, on the grounds of Mr. Zigiranyirazo's appeal related to his alibi;⁶

CONSIDERING the requirements for the admission of evidence on appeal under Rule 115 of the Rules of Procedure and Evidence of the Tribunal ("Rules");⁷

NOTING that 10 August 2009 was the deadline for the submission of motions for additional evidence in this case and, accordingly, that Mr. Zigiranyirazo filed his Motion out of time;⁸

¹ Motion under Rule 115 RPE, 14 September 2009, para. 6 ("Motion").

² Prosecutor's Response to "Motion under Rule 115 RPE", 18 September 2009, paras. 4, 5 ("Response").

³ Reply to Prosecutor's Response to Motion under Rule 115 RPE, 23 September 2009 ("Reply").

⁴ Scheduling Order, 20 July 2009.

⁵ Order for the Preparation of the Appeal Hearing, 27 August 2009.

⁶ Second Order for the Preparation of the Appeal Hearing, 18 September 2009, p. 1 ("[...] during the course of the appeal hearing in addition to other matters advanced by the parties in their submissions or that the Appeals Chamber may wish to raise. [the parties] are invited to focus their submissions on Mr. Zigiranyirazo's Fifth, Sixth, Seventh, and Twelfth Grounds of Appeal."). The Sixth and Twelfth Grounds of Appeal relate to the Trial Chamber's assessment of Mr. Zigiranyirazo's alibi with respect to the events at Kesho Hill and the Kiyovu Roadblock.

⁷ See Decision on Zigiranyirazo's Motion for Admission of Additional Evidence on Appeal, 16 September 2009, paras. 5-7.

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RECOGNIZING the Motion, nevertheless, as validly filed in view of the importance of the matter;⁹

EMPHASIZING the need to provide clarity to the parties with respect to the status of the proposed exhibits in anticipation of the hearing;

DETERMINING that the proposed exhibits satisfy the criteria for the admission of additional evidence under Rule 115 of the Rules;

NOTING that the Appeals Chamber's reasoning with respect to this decision will be provided in the Appeal Judgement;

EMPHASIZING that the present conclusion pertains merely to the admissibility of the proffered material and is in no way indicative of the Appeals Chamber's considerations in relation to the merits of Mr. Zigiranyirazo's appeal;


HEREBY GRANTS the Motion and **ADMITS** Exhibits A and B, annexed thereto.

Done in English and French, the English version being authoritative.

Done this 24th day of September 2009
At The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Theodor Meron
Presiding

⁸ According to Rule 115(A) of the Rules, a motion for additional evidence must be filed not later than 30 days from the date for filing of the brief in reply, unless good cause is shown. The brief in reply in this case was filed on 10 July 2009. See Appellant's Reply Brief, 10 July 2009.

⁹ See Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, para. 12 (stating that a Pre-Appeal Judge or the Appeals Chamber may vary any time limit or recognize, as validly done any act done after the expiration of a time limit).