



ICTR-04-81-I
15-10-2009
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
(8432 - 8429)

8432
luah

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Sergei Alekseevich Egorov
Judge Florence Rita Arrey

Registrar: Adama Dieng

Date: 15 October 2009

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-I

2009 OCT 15 1 P 2: 30
JUDICIAL RECORDS ARCHIVE
RECEIVED

**DECISION ON DEFENCE REQUEST
TO ADMIT A DOCUMENT**

The Prosecution
Ifeoma Ojemeni-Okali
Simba Mawere
Christiana Fomenky

The Defence
Lennox Hinds
Cainnech Lussiaà-Berdou

blu

8431

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED of a Defence motion to admit a document, filed on 7 September 2009;

CONSIDERING the Prosecution response, filed on 8 September 2009;

HEREBY DECIDES the motion.

INTRODUCTION

1. During cross-examination of Prosecution Witness SAA on 28 August 2008, the Defence put to him a document entitled "Fourteen months of Repression in Rwanda; Democracy in Jeopardy". Subsequently, the Defence sought to have the document admitted. The Prosecution objected. The Chamber ruled that there was too much uncertainty about the document and its provenance but added that admission might be considered at a later date if further information was provided.¹ The Defence has since obtained additional information about the Committee for the Respect of Human Rights and Democracy in Rwanda ("CRDDR"), which is indicated as the author of the document, and now requests the Chamber to reconsider its oral decision.²

2. The Prosecution submits that the motion should be dismissed. The document that the Defence seeks to have admitted is different from the one used to cross-examine Witness SAA. Moreover, the Defence has not provided sufficient clarification to resolve the uncertainty surrounding its nature and provenance.³

DELIBERATIONS

3. Rule 89 (C) of the Rules of Procedure and Evidence provides that a Chamber "may admit any relevant evidence which it deems to have probative value". When offering a document for admission, the moving party must make a *prima facie* showing that the document is both relevant and has probative value.⁴

¹ T. 28 August 2008 pp. 54-56, 57 ("... the character of this document is a bit uncertain. We do not know the exact provenance of it, the persons behind it, the method according to which it was established. There are too many question marks raised concerning this document, so we do not feel that it would be right to accept it as a – an exhibit at this stage. Should there, later, be more information about this, we could be addressed again.").

² Motion for Reconsideration, dated 31 August 2009. The original title of the report is *Quatorze mois de répression au Rwanda, Le processus de démocratisation en péril*".

³ Prosecutor's Response to Defence Motion for Reconsideration, filed on 8 September 2009.

⁴ *Prosecutor v. Bagosora et al.*, Decision on the Prosecutor's Motion for the Admission of Certain Materials under Rule 89 (C) (TC), 14 October 2004, para. 22; *Bagosora et al.*, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 7; *Delalic and Delic*, Decision on Application of Defendant Zejnil Delalic for Leave to Appeal against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998, para. 17 ("At the stage of admission of evidence, the implicit requirement of reliability means no more than that there must be sufficient indicia of reliability to make out a *prima facie* case.").

John

8430

4. Documents need not be recognised by a witness in order to have probative value.⁵ On the other hand, there must be some indication that the document is what the moving party says it is, and that its contents are reliable. The Rules impose no technical requirements for establishing the authenticity of a document, but a number of factors have been considered relevant, including the extent to which its content is corroborated by other evidence; the place where it was obtained; and whether it is an original or a copy; and whether it is signed, sealed, stamped, or certified in any way.⁶

5. When the document apparently authored by the organisation CRDDR was put to Witness SAA, the purpose was to contradict his testimony as to the date on which Bernard Bajyagahe was killed.⁷ This issue is directly related to the charges against Setako.⁸ The witness did not recognise its authenticity but then commented upon its contents in relation to his earlier testimony.⁹ The Chamber considers that the Defence has discharged its *prima facie* burden of showing relevance.

6. The same document is now being produced as Annexure 1 to the Defence motion.¹⁰ It is a copy, does not bear a seal or signature, and is in extract form and therefore incomplete. On the other hand, it is stamped with K numbers and comes from the Prosecution archives. The Defence has now found in the Prosecution database additional documents, also bearing K numbers and annexed to the motion, from or relating to CRDRR. These newly discovered documents shows that it is a human rights organisation and gives further information about some of its activities and its former coordinator.¹¹

7. This additional information reduces some of the uncertainty expressed by the Chamber when it made its oral ruling. The Chamber therefore now considers that there is a *prima facie* basis to admit the document. It is recalled that its admissibility should not be confused with the weight to be attached to it: the former requires some relevance and probative value, whereas the latter is an assessment to be made by the Chamber at the end of the case.¹²

⁵ *Kvočka et al.*, Decision on Exhibits, 19 July 2001 (“It is not the practice in this case to insist on exhibits being tendered during the examination of witnesses.”); *Blaskic*, Judgement (TC), 3 March 2000, para. 35 (holding that a bench composed of professional judges was able to assess documentary evidence and accord it the proper weight).

⁶ *Prosecutor v. Bagosora et al.*, Decision on Request to Admit United Nations Documents into Evidence Under Rule 89 (C) (TC), 25 May 2006 para. 4.

⁷ T. 26 August 2008 pp. 27-28.

⁸ Indictment para. 48.

⁹ T. 27 August 2008 pp. 45, 51-52, 58.

¹⁰ Although Annexure 1 bears different K numbers from the document put to Witness SAA, the Chamber accepts that the two are nonetheless substantively the same.

¹¹ The new documents include: a transcription of an address given by Gasana Ndobu, the former coordinator of CRDDR, at an international conference at The Hague in September 1994; a copy of a stamped facsimile from the United Nations in Geneva, attaching 1994 letters from CRDDR addressed to the UN Secretary-General; a page from Alison Des Forge’s book, *Leave None to Tell the Story*, in which Gasana Ndobu is thanked for assistance with documentation and in interpreting evidence; and a report entitled “*First Annual Report of the National Human Rights Commission*”, bearing the name of Gasana Ndobu as president.

¹² *Nyiramasuhuko v. Prosecutor*, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC), 4 October 2004, paras. 6-7.

6h

8429

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Defence motion; and

REQUESTS the Registry to assign a Defence exhibit number to the document attached to the motion as Annexure 1.

Arusha, 15 October 2009



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
Judge

[Seal of the Tribunal]

