



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T
07-05-2010
(4294-4289)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

4294
HM

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 7 May 2010

THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

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**DECISION ON DEFENCE MOTION FOR THE ADMISSION OF DOCUMENTARY
EVIDENCE**

Rules 54 & 89 (C) of the Rules of Procedure and Evidence

Office of the Prosecution

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INTRODUCTION

1. On 19 April 2010, the Defence filed a Motion pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”) requesting that the Trial Chamber admit documents received from the Government of France (“France”) on 16 March 2010 into evidence as defence exhibits (“Documents”).¹

2. On 21 April 2010, the Prosecution filed a response opposing the Motion.²

3. On 23 April 2010, the Defence filed a reply.³

Submissions of the Parties

4. Following several requests for information, the Defence received from France, on 16 March 2010, a number of documents, including copies of telegrams issued by the French Embassy in Kigali in April 1994. The Defence requests that it be permitted to enter the material into evidence pursuant to Rule 89 (C).⁴ According to the Defence, the telegrams indicate the dates and times the accused Callixte Nzabonimana, his wife and 5 children took refuge at the French Embassy in April 1994. They are therefore relevant to his alibi.⁵

5. The Defence contends that the telegrams contain evidence which is relevant, reliable and has probative value,⁶ and should therefore be admitted into evidence. It also argues that the telegrams will corroborate the testimony of witnesses who place Nzabonimana at the French Embassy in Kigali during the relevant timeframe.⁷

6. According to the Defence, the material consists of official documents from French archives, written by French authorities in 1994, at a time when no charges had been lodged against Nzabonimana, and the material is therefore reliable.⁸ The Defence also argues that France has no

¹ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Callixte Nzabonimana’s Motion for the Admission of Documentary Evidence (“Motion”), 19 April 2010.

² *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor’s Response to Callixte Nzabonimana’s Motion for the Admission of Documentary Evidence (“Response”), 21 April 2010.

³ *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Reply to Prosecutor’s Response to Callixte Nzabonimana’s Motion for the Admission of Documentary Evidence (“Reply”), 23 April 2010.

⁴ Motion, para. 3.

⁵ Motion, paras. 7-9.

⁶ Motion, paras. 3 - 4.

⁷ Motion, para. 10.

⁸ Motion, paras. 12- 13, 15.

stake in the instant case,⁹ and observes that France transmitted the material directly to the Registry of the Tribunal, meaning that the source of the documents is also reliable.¹⁰

7. In its response to the Defence submission, the Prosecution objects to the admission into evidence of the documents received from France as they stand.¹¹ The Prosecution submits that the documents fall under the purview of Rule 89(D) and need verification including whether or not they were redacted, prior to their admission into evidence.¹² The Prosecution proposes that prior to the close of the Defence case, a status conference be convened to determine whether the admission into evidence of the documents submitted by France on 16 March 2010 would be appropriate.¹³

8. The Defence in its reply contends that in its submission of 23 March 2010, it challenged the completeness of the documents submitted by France but not their reliability.¹⁴ The Defence objects to the Prosecutor's request to hold a status conference to address this issue.¹⁵

DELIBERATIONS

Applicable Law

9. Rule 89 (C) of the Rules provides that a Chamber "may admit any relevant evidence it deems to have probative value." Rule 89 (D) adds that a Chamber "may request verification of the authenticity of evidence obtained out of court." In determining the relevance of evidence, the moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.¹⁶ In order to establish the probative value of the evidence, the moving party must show that the evidence tends to prove or disprove an issue.¹⁷

⁹ Motion, para. 14.

¹⁰ Motion, para. 16.

¹¹ Response, paras. 15-16. The Prosecution adopts and reiterates its submissions of 24 March 2010 where it stated that "the documents contain apparent contradictions and are incomplete thus cannot be admitted into evidence without further explanation."

¹² Response, para. 18.

¹³ Response, para. 19.

¹⁴ Reply, paras. 6-9. The Defence also refers to its Defence Submissions of 23 March 2010. As regards the issue of verification, the Defence in its reply states that it is confident that the documents have not been tampered with as they were directly transmitted by France to the Registry of the Tribunal, Reply, paras. 18-19.

¹⁵ Reply, paras. 11-12.

¹⁶ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on the Prosecution's Motion for Admission of Certain Exhibits into Evidence, 22 January 2008, para. 6; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira, 26 March 2008, para. 3.

¹⁷ *Karemera et al.*, Decision on the Prosecution Motion for Admission into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumpatse, 2 November 2007, para. 4; *Karemera et. Al.*, Interim Order on the Prosecutor's Motion for Admission of Documents, 8 August 2007, para. 7.

10. A factor in the assessment of the relevance and probative value of evidence is the requirement that it be *prima facie* credible; that is, it must have sufficient indicia of reliability.¹⁸ While a Chamber always retains the competence under Rule 89(D) to request verification of the authenticity of evidence obtained out of court, “to require absolute proof of a document’s authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Sub-rule 89(C).”¹⁹ The Trial Chamber therefore considers that it is now well settled that documents need not be recognised by a witness to be considered as having probative value.²⁰

11. The Trial Chamber recalls that the admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, or even whether its contents are truthful or accurate,²¹ which are issues to be decided by the Chamber after hearing the totality of the evidence.²²

Authenticity of the Documents

12. The Trial Chamber observes that the source of the material is known. The documents were submitted by France following requests pursuant to Article 28 from this Trial Chamber for the purpose of assisting the Defence to prepare its alibi defence. The Prosecution has made no argument casting doubt on the Defence submission that these are official documents emanating from French archives.²³ The Trial Chamber notes that the documents bear dates, times, and official stamps that support their authenticity. It is also mindful of the fact that the documents were transmitted directly from the French Embassy in Tanzania to the Registry of the Tribunal before reaching the Defence. Thus, although the Prosecution argues that the documents fall under the purview of Rule 89 (D) and

¹⁸ *The Prosecutor v. Delalic and Delic*, Case No. IT-96-21 (“*Delalic et al.*”), Decision on Application of Defendant Zejnir 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 (“Decision on Admissibility”), para. 20; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41 (“*Bagosora et al.*”), Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004, para. 8.

¹⁹ *Delalic et al.*, Decision on Admissibility, para. 20.

²⁰ *Karemera et al.*, Decision on Admission of Certain Exhibits, para. 7; *Karemera et al.*, Decision on the Prosecution Motion for Admission into Evidence of UNAMIR Documents, 30 October 2007 (“Decision on Admission of UNAMIR Documents”), para. 6.

²¹ *Bagosora et al.*, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C), 25 May 2006, para. 4.

²² *Karemera et al.*, Decision on Admission of UNAMIR Documents, para. 7; *Karemera et al.*, Decision on Admission of Certain Exhibits, para. 6; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28, 31 January 2005, para. 12.

²³ Motion, para. 15.

accordingly require verification, the Trial Chamber considers that the Defence has established that the documents bear sufficient indicia of reliability²⁴ to meet the threshold for admissibility.

Relevance and Probative Value of the Documents

13. The Defence asserts that the documents in Annex A to the instant Motion are relevant as they show the presence of Nzabonimana at the French Embassy in Kigali during a particular period, and that they corroborate the evidence of alibi witnesses. The Defence argues that there is a strong connection between the documents and the Prosecutor's allegations against the Accused in the indictment.²⁵ The Prosecution objects to the admission of the documents stating that they are not complete, but provides no justification for this allegation.

14. The Trial Chamber notes that the Defence has long indicated that it would provide an alibi for the Accused for the period 7-12 April 1994 and in particular that it would show that the Accused had sought refuge at the French Embassy in Kigali on these days. Thus, both the Pre-Trial and Trial Chambers have issued Decisions requesting that France provide relevant documents to the Defence.²⁶ The documents at issue indicate that the Accused may have been at the French Embassy in Kigali between 7 and 12 April 1994. The Trial Chamber therefore considers that these documents may be relevant and that they have probative value.

15. The Trial Chamber also considers that it must determine whether the admission into evidence of the material would advance the interests of justice. The Trial Chamber is mindful of the rights of the accused as prescribed by Articles 19 and 20 of the Statute of the International Criminal Tribunal for Rwanda ("Statute"). While the Trial Chamber notes the Prosecution's objection to admission into evidence of the documents, the Trial Chamber considers that the completeness, or lack thereof, is a matter to be considered when determining the weight to be accorded to the documentary evidence.

²⁴ Indicia of reliability include: the authorship of the document; whether it is an original or a copy; the place from which the document was obtained in conjunction with its chain of custody; whether its contents are supported by other evidence; and the nature of the document itself, such as signatures, stamps, or the form of the handwriting, *see Karemera et al.*, Decision on the Prosecutor's Motion for Admission of Certain Exhibits into Evidence, 25 January 2008, para. 8.

²⁵ Motion, para. 6.

²⁶ *See Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, *Décision sur la Requête urgente de Callixte Nzabonimana demandant à la Chambre d'ordonner à la France Coopération et Assistance*, 2 juillet 2009; *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Motion Asking the Chamber to Request the President to Report the Matter of France's Refusal to Cooperate to the Security Council; 19 October 2009; *Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Nzabonimana's Motion for Stay of Proceedings; Reconsideration and/or Certification of Decision Rendered on 29 October 2009; and Reconsideration and/or Certification of the Decision Rendered on 30 October 2009.

16. Accordingly, the Trial Chamber is satisfied that these documents meet the threshold for admissibility.

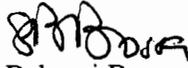
FOR THESE REASONS, THE TRIAL CHAMBER

GRANTS the Motion;

ADMITS into evidence Annex A to the Motion;

REQUESTS the Registry to assign exhibit numbers to these documents in the instant case.

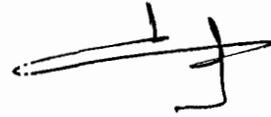
Arusha, 7 May 2010, done in English.



Soomy Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge



Mparany Rajohnson
Judge

[Seal of the Tribunal]

