



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

1467/H

CA

ICTR-97-31-A
27 September 2010
{1467/H - 1454/H}

IN THE APPEALS CHAMBER

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

Registrar: Mr. Adama Dieng

Decision of: 27 September 2010

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: ROSEITE MUZIGO-MUKIRISO
SIGNATURE: *[Signature]* DATE: 22/09/10

Tharcisse RENZAHO

v.

THE PROSECUTOR

Case No. ICTR-97-31-A

**DECISION ON THARCISSE RENZAHO'S MOTIONS FOR ADMISSION OF
ADDITIONAL EVIDENCE AND INVESTIGATION ON APPEAL**

Counsel for the Appellant

Mr. François Cantier, Lead Counsel
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Mr. Hassan Bubacar Jallow
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Mr. Alphonse Van
Mr. Abdoulaye Seye
Ms. Clair Duffy
Ms. Florida Kabasinga

ICTR Appeals Chamber

Date: 27th September 2010
Action: R. *James*
Copied To: Concerned Judges,
Parties, Judicial Archives, LG, LSS *[Signature]*

1. 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 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seised of three motions to admit additional evidence on appeal pursuant to Rule 115 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), as well as one motion to order an investigation and admit additional evidence pursuant to Rules 77 and 115 of the Rules, filed by Tharcisse Renzaho.¹ The Office of the Prosecutor ("Prosecution") responded to each motion.²

I. BACKGROUND

2. On 14 July 2009, Trial Chamber I of the Tribunal ("Trial Chamber") convicted Mr. Renzaho of genocide, crimes against humanity (murder and rape), and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (murder and rape), and imposed a single sentence of imprisonment for the remainder of his life.³ Mr. Renzaho has appealed his convictions and sentence.⁴ The appeal hearing in this case was held on 16 June 2010.⁵

¹ *Requête confidentielle aux fins d'admission de nouveaux documents au dossier*, 1 June 2010 (confidential) ("First Motion"); *Requête aux fins d'admission de nouveaux documents au dossier*, 4 June 2010 ("Second Motion"); *Requête en demande d'enquête sur l'identité du témoin BUO et en admission de nouveaux documents au dossier*, 7 June 2010 (confidential) ("Third Motion"); *Requête aux fins d'admission de nouveaux documents au dossier*, 7 June 2010 (confidential) ("Fourth Motion") (collectively, "Motions"). See also *Requête en rectification d'erreur matérielle*, 3 June 2010, seeking to correct an erroneous reference in the First Motion to an exhibit number in the *Bizimungu et al.* case from D107 to D197, which the Appeals Chamber accepts. A public version of the First Motion was also filed. See *Requête aux fins d'admission de nouveaux documents au dossier*, 1 June 2010. No public versions of the Third or Fourth Motions were filed. The Appeals Chamber also notes that the Third and Fourth Motions were stamped as received by the Registry on 7 June 2010. Rule 115 of the Rules sets a deadline of 30 days from the date for filing of the brief in reply, which in the present case was 4 June 2010. See *Réplique de l'appelant*, Art 113 RPP, 5 May 2010. However, the dates of signing and transmission on the Third and Fourth Motions are 4 June 2010, and the Prosecution does not raise any issue with respect to the validity of their filing. The Appeals Chamber therefore recognizes *proprio motu* the filing of the Third and Fourth Motions as validly done. See Practice Direction on Formal Requirements for Appeals from Judgement, 4 July 2005, para. 12.

² Prosecutor's Response to "Requête aux fins d'admission de nouveaux documents", 7 June 2010 ("Response to First Motion"); Prosecutor's Response to Second "Requête aux fins d'admission de nouveaux documents", 8 June 2010 ("Response to Second Motion"); Prosecutor's Response to "Requête en d[e]mande d'enquête sur l'identité du témoin BUO et en admission de nouveaux documents au dossier", 18 June 2010 ("Response to Third Motion"); Prosecutor's Response to Fourth "Requête aux fins d'admission de nouveaux documents", 6 July 2010 ("Response to Fourth Motion"). Mr. Renzaho has not replied to any of the Prosecution's responses.

³ *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, dated 14 July 2009 and filed 14 August 2009 ("Trial Judgement"), paras. 812, 826.

⁴ *Acte d'Appel*, 2 October 2009 ("Notice of Appeal"); *Mémoire d'Appel*, 2 March 2010 (confidential) ("Appellant's Brief"). See also *Réponse à la demande de la Chambre d'Appel du 14 octobre 2009*, 23 October 2009; *Livre d'appel de l'appelant*, 2 March 2010 (confidential); *Mémoire d'Appel Public*, 2 April 2010; *Erratum – Requête en rectification d'erreur matérielle Mémoire d'Appel*, 7 April 2010.

⁵ AT. 16 June 2010.

II. APPLICABLE LAW

3. Rule 115 of the Rules provides a mechanism for the admission of additional evidence on appeal where a party is in possession of material that was not before the Trial Chamber and which relates to a fact or issue litigated at trial.⁶ This must be done no later than 30 days from the date of filing of the brief in reply unless good cause is shown for a delay.⁷ According to Rule 115(A) of the Rules, a motion for additional evidence shall clearly identify with precision the specific finding of fact made by the Trial Chamber to which the additional evidence is directed. Rule 115(B) of the Rules provides that the additional evidence must not have been available at trial and must be relevant and credible.

4. When determining the availability of evidence at trial, the Appeals Chamber will consider whether the party seeking to tender the evidence has shown that it sought to make "appropriate use of all mechanisms of protection and compulsion available under the Statute and the Rules of the International Tribunal to bring evidence [...] before the Trial Chamber."⁸ The party is therefore expected to apprise the Trial Chamber of all difficulties that it encounters in obtaining the evidence in question.⁹ Once it has been determined that the additional evidence meets these conditions, the Appeals Chamber will determine in accordance with Rule 115(B) of the Rules whether it could have been a decisive factor in reaching the decision at trial.¹⁰

5. Furthermore, in accordance with established jurisprudence, where the evidence is relevant and credible, but was available at trial, or could have been discovered through the exercise of due diligence, the Appeals Chamber may still allow it to be admitted on appeal provided the moving party can establish that the exclusion of it *would* amount to a miscarriage of justice.¹¹ That is, it

⁶ *Siméon Nchamihigo v. The Prosecutor*, Case No. ICTR-2001-63-A, Decision on Siméon Nchamihigo's Second Motion for Leave to Present Additional Evidence on Appeal, 28 September 2009 ("*Nchamihigo* Rule 115 Decision"), para. 10; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Zigiranyirazo's Motion for Admission of Additional Evidence on Appeal, 16 September 2009 ("*Zigiranyirazo* Rule 115 Decision"), para. 5; *Simon Bikindi v. The Prosecutor*, Case No. ICTR-01-72-A, Decision on Simon Bikindi's Motions to Admit Additional Evidence Pursuant to Rule 115 of the Rules, 16 September 2009 ("*Bikindi* Rule 115 Decision"), para. 3.

⁷ Rule 115 of the Rules.

⁸ See *Nchamihigo* Rule 115 Decision, para. 11; *Zigiranyirazo* Rule 115 Decision, para. 6, quoting *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Decision on Prosecution Motion for Admission of Additional Evidence, 10 December 2004 ("*Ntagerura et al.* Rule 115 Decision"), para. 9 (citations omitted); *Bikindi* Rule 115 Decision, para. 4.

⁹ *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-2001-70-A, Decision on Rukundo's Motion for the Admission of Additional Evidence on Appeal, 4 June 2010 ("*Rukundo* Rule 115 Decision"), para. 6. See also *Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, Decision on Sreten Lukić's Second Motion to Admit Additional Evidence on Appeal, 29 April 2010 ("*Šainović et al.* Appeal Decision of 29 April 2010"), para. 6.

¹⁰ *Nchamihigo* Rule 115 Decision, para. 11; *Zigiranyirazo* Rule 115 Decision, para. 6; *Bikindi* Rule 115 Decision, para. 4.

¹¹ *Nchamihigo* Rule 115 Decision, para. 12; *Zigiranyirazo* Rule 115 Decision, para. 7; *Bikindi* Rule 115 Decision, para. 5.

must be demonstrated that had the additional evidence been adduced at trial, it *would* have had an impact on the verdict.¹²

6. In both cases, the applicant bears the burden of identifying with precision the specific finding of fact made by the Trial Chamber to which the additional evidence pertains, and of specifying with sufficient clarity the impact the additional evidence could or would have had upon the Trial Chamber's verdict. A party that fails to do so runs the risk that the tendered material will be rejected without detailed consideration.¹³

7. Finally, the Appeals Chamber has repeatedly recognised that the significance and potential impact of the tendered material is not to be assessed in isolation, but in the context of the evidence presented at trial.¹⁴

III. DISCUSSION

8. In his First, Second, and Fourth Motions, Mr. Renzaho seeks the admission of several documents which he contends are new, exculpatory, and impact the Trial Chamber's decisions.¹⁵ In his Third Motion, Mr. Renzaho calls into question Prosecution Witness BUO's identity, seeks to admit documents which he claims support this contention, and requests an order for an investigation into the matter.¹⁶

9. The Prosecution opposes Mr. Renzaho's Motions, submitting that they are frivolous and fail to satisfy the requirements under Rule 115 of the Rules. The Prosecution seeks their summary dismissal as well as sanctions against counsel.¹⁷

A. The First Motion

10. In his First Motion, Mr. Renzaho seeks the admission of the following "new" documents: (1) two *pro justitia* statements to Rwandan authorities from Astérie Nikuze and Dieudonné Nkulikiyinka; (2) an interview with Sixbert Musangamfura in 2001 and its summary; (3) two letters between Egyptian authorities and the Office of the Prosecutor in 2002; (4) a statement given by

¹² *Nchamihigo* Rule 115 Decision, para. 12; *Zigiranyirazo* Rule 115 Decision, para. 7; *Bikindi* Rule 115 Decision, para. 5.

¹³ *Rukundo* Rule 115 Decision, para. 8. See also *Šainović et al.* Appeal Decision of 29 April 2010, para. 10; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Decision on Dragomir Milošević's Third Motion to Present Additional Evidence, 8 September 2009 ("*Dragomir Milošević* Appeal Decision of 8 September 2009"), para. 11.

¹⁴ *Rukundo* Rule 115 Decision, para. 9. See also *Šainović et al.* Appeal Decision of 29 April 2010, para. 11; *Dragomir Milošević* Appeal Decision of 8 September 2009, para. 12.

¹⁵ First Motion, paras. 1-3, 13-17, p. 4; Second Motion, paras. 1-9, p. 3; Fourth Motion, paras. 1, 4-9, p. 3.

¹⁶ Third Motion, paras. 1-26, p. 5.

¹⁷ Response to First Motion, paras. 2-4, 21, 22; Response to Second Motion, paras. 2, 3, 12, 13; Response to Third Motion, paras. 2, 14, 16, 17; Response to Fourth Motion, paras. 2, 10-12.

Witness AZB in 1999; and (5) an extract of a radio broadcast of 11 April 1994 entered into evidence on 28 May 2007 as Exhibit D197(E) in the *Bizimungu et al.* case ("*Bizimungu Exhibit*").¹⁸

11. The Prosecution responds that the proffered evidence was available at trial,¹⁹ and that Mr. Renzaho fails to demonstrate its relevance or that it would have been a decisive factor in the decision under appeal.²⁰

12. The Appeals Chamber observes that Mr. Renzaho makes no effort to demonstrate that the admissibility requirements under Rule 115 of the Rules are met in respect of the first four listed items. Mr. Renzaho merely submits that these documents relate to various grounds of his appeal.²¹ The Appeals Chamber recalls that "[t]he general assertion that the proffered material is relevant to an argument raised on appeal and is likely to prove a fact that the Trial Chamber considered immaterial for the conviction, does not suffice for these purposes."²² For these reasons, the Appeals Chamber summarily dismisses the admission of these documents on appeal.

13. As to the *Bizimungu Exhibit*, Mr. Renzaho contends that it was never disclosed to him and could not have been discovered through the exercise of due diligence before the close of his case.²³ He further claims that its admission at trial would have led the Trial Chamber to a different conclusion in respect of control over resources in the Kigali-Ville prefecture and superior responsibility in general.²⁴ The Appeals Chamber is satisfied that the contents of the *Bizimungu Exhibit*, which pertain to the removal of corpses from the streets of Kigali-Ville,²⁵ are *prima facie* credible and relevant.

14. The Appeals Chamber notes, however, that this document was tendered in the *Bizimungu et al.* case on 28 May 2007, eleven days after Mr. Renzaho's defence case commenced²⁶ and several months before the defence case closed on 6 September 2007.²⁷ The *Bizimungu Exhibit* was

¹⁸ First Motion, para. 1, p. 4, Annexes 1-6. See also *Requête en rectification d'erreur matérielle*, 3 June 2010.

¹⁹ Response to First Motion, paras. 5-11.

²⁰ Response to First Motion, paras. 12-20.

²¹ First Motion, paras. 4-7.

²² *Dragomir Milošević* Appeal Decision of 8 September 2009, para. 17.

²³ First Motion, paras. 8-12. Mr. Renzaho's defence case closed on 6 September 2007. See Trial Judgement, para. 842.

²⁴ First Motion, paras. 13-16.

²⁵ The Trial Chamber found that on 11 April 1994, Renzaho chaired a meeting at the prefecture office where he instructed the attendees to clear bodies from Kigali-Ville. It further found that staff from the prefecture's sanitation unit, the Ministry of Public Works, the Ministry of Public Health, the International Committee for the Red Cross, and prisoners transported in prefecture office vehicles from the Kigali-Ville main prison participated in the clean-up operation. See Trial Judgement, para. 341. The Trial Chamber determined that "the entire operation shows a level of organisation within the Kigali-Ville prefecture, and a degree of co-ordination with other government services as well as the medium of radio that demonstrates Renzaho's control over resources, both human and material, after 6 April 1994." See Trial Judgement, para. 343.

²⁶ Mr. Renzaho's defence case opened on 17 May 2007. See Trial Judgement, para. 842.

²⁷ See Trial Judgement, para. 842. The Appeals Chamber notes that the Trial Judgement was delivered almost two years later.

therefore clearly available at trial, and the Appeals Chamber is not persuaded by Mr. Renzaho's argument that, because it was only available on the Tribunal database months after it was admitted, the *Bizimungu* Exhibit could not have been discovered before the delivery of the Trial Judgement through the exercise of due diligence.²⁸ In particular, the Appeals Chamber notes that Prosecution Witness UL, whom Mr. Renzaho aims to discredit through the admission of the *Bizimungu* Exhibit, specifically mentioned the role and participation of Casimir Bizimungu, the former Minister of Public Health, in the efforts to rid the streets of dead bodies.²⁹ Mr. Renzaho was therefore long aware of the potential relevance of evidence presented in the *Bizimungu et al.* case, especially Mr. Bizimungu's own testimony given from 22 May to 12 June 2007,³⁰ during which the *Bizimungu* Exhibit was tendered. The Appeals Chamber considers that, for the purposes of Rule 115 of the Rules, the *Bizimungu* Exhibit was available at trial or discoverable through the exercise of due diligence. Consequently, it can only be admitted as additional evidence on appeal if Mr. Renzaho demonstrates that this document *would* have had an impact on the verdict.

15. Even if the *Bizimungu* Exhibit had been adduced at Mr. Renzaho's trial, the Appeals Chamber considers that it would not have had any impact on the Trial Chamber's verdict. In particular, it does not support Mr. Renzaho's contention that he did not initiate or convene the 11 April 1994 meeting regarding the removal of corpses.³¹ Although the document shows that the Minister of Public Works "call[ed] upon all drivers and those of bulldozers of the division of roads and bridges to turn up at the office of the prefecture of the city of Kigali for exigencies of service [...] at 9 a.m. today", and that "Dr. Casimir Bizimungu call[ed] upon the staff of the "public [hygiene]" division to show up this Monday 11 April 1994 at 9 a.m. [at the office of the Kigali-Ville prefecture] for exigencies of service",³² this does not call into question the Trial Chamber's finding that "Renzaho directed state government employees to report to the prefecture office through a radio broadcast made on 10 April 1994."³³

16. Accordingly, the Appeals Chamber finds that the denial of the admission of this evidence on appeal will not result in a miscarriage of justice. Therefore, Mr. Renzaho's request is dismissed.

²⁸ See First Motion, para. 12.

²⁹ See Witness UL, T. 9 January 2007 pp. 54-56, 62, 64 (closed session).

³⁰ See *The Prosecutor v. Casimir Bizimungu et al.*, Case No. 99-50-T, Casimir Bizimungu, T. 22-24, 28-31 May 2007, T. 4-7, 11, 12 June 2007.

³¹ First Motion, para. 13.

³² *Bizimungu* Exhibit, p. 1.

³³ Trial Judgement, para. 341.

B. The Second Motion

17. In his Second Motion, Mr. Renzaho seeks the admission of “the complete Gacaca file of Mr. Munanira” (“Munanira Gacaca File”), pursuant to Rules 68 and 115 of the Rules.³⁴ He submits that the Munanira Gacaca File is exculpatory and casts doubt on Prosecution Witness AWN’s testimony that Mr. Munanira raped her, as no witness testified in the Gacaca proceedings against Mr. Munanira that he committed rape.³⁵ Mr. Renzaho submits that the Munanira Gacaca File could not have been procured at trial because the proceedings against Mr. Munanira were held in August 2007, after Witness AWN testified before the Tribunal.³⁶

18. The Prosecution responds that Mr. Renzaho had ample time and opportunity to conduct investigations and, if necessary, call Mr. Munanira as a witness, and that he does not demonstrate the credibility or relevance of the material.³⁷ It submits that the material is, at best, a summary of Mr. Munanira’s case file, that the name of only one male witness appears therein, and that the limited details provided therein only show that Mr. Munanira was accused and found guilty of killing three victims at a specific location during the genocide.³⁸

19. The Appeals Chamber notes that Mr. Renzaho makes no effort to demonstrate the reliability of these documents, and merely claims that they constitute Mr. Munanira’s “complete” Gacaca file. Even if it could be determined that the material was relevant and credible, the Appeals Chamber recalls that a party seeking to adduce additional evidence on appeal must establish that the said evidence was not available at trial *in any form whatsoever*.³⁹ In this case, Mr. Renzaho was aware of Witness AWN’s accusations against Mr. Munanira as early as 31 October 2005,⁴⁰ and he has not shown that he tried to contact Mr. Munanira to adduce his live testimony at trial. Mr. Renzaho’s mere assertion that the Gacaca proceedings against Mr. Munanira took place in August 2007 does not demonstrate that such evidence was unavailable at trial.

20. Even if the Munanira Gacaca File had been adduced at trial, the Appeals Chamber does not consider that this would have had any impact on the Trial Chamber’s verdict. The absence of rape

³⁴ Second Motion, para. 1. See also Second Motion, p. 3, Annex 1. Mr. Renzaho does not, however, allege any violation under Rule 68 of the Rules in respect of these documents.

³⁵ Second Motion, paras. 2-5.

³⁶ Second Motion, paras. 6-9.

³⁷ Response to Second Motion, paras. 6, 7.

³⁸ Response to Second Motion, para. 10.

³⁹ See *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motions for Leave to Present Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 8 December 2006, para. 40; *Ntagerura et al.* Rule 115 Decision, para. 9.

⁴⁰ The summary of Witness AWN’s anticipated testimony was attached to the Prosecution Pre-Trial Brief, which was filed on 31 October 2005. See *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-I, Prosecution Pre-Trial Brief, 31 October 2005, pp. 63, 64.

charges against Mr. Munanira in Rwanda does not, as such, contradict evidence before this Tribunal that he committed rapes.

21. Accordingly, the Appeals Chamber finds that the denial of the admission of this evidence on appeal will not result in a miscarriage of justice. Therefore, Mr. Renzaho's request is dismissed.

C. The Third Motion

22. In his Third Motion, Mr. Renzaho seeks the admission of two identification sheets containing the protected information of Prosecution Witness BUO ("Witness BUO Information"), a photocopy of the identity card of a person purported to be Witness BUO's mother, containing the names of her children ("Identity Card"); and extracts of the Tribunal's *Setako* Trial Judgement ("*Setako* Extracts").⁴¹ He submits that these documents constitute preliminary evidence to show that Witness BUO is not who he says he is, and accordingly requests the admission of these documents into evidence, as well as an investigation under Rule 77 of the Rules into the true identity of this witness.⁴²

23. The Prosecution responds that Mr. Renzaho's contentions about Witness BUO's identity are speculative and that he fails to explain why an investigation into his identity is warranted or how Rule 77 of the Rules is applicable in this case.⁴³ The Prosecution submits that Mr. Renzaho was in possession of all of Witness BUO's relevant information as early as 18 October 2006, and therefore able to investigate and find information about his identity before and during the trial.⁴⁴ The Prosecution further submits that Mr. Renzaho fails to satisfy the threshold of admissibility under Rule 115 of the Rules, and that his requests are manifestly frivolous.⁴⁵

1. Admission of Evidence

24. The *Setako* Trial Judgement was pronounced on 25 February 2010 and issued in writing on 1 March 2010. The *Setako* Extracts were therefore not available at trial. To support his contention that the Trial Chamber relied on the testimony of an impostor,⁴⁶ Mr. Renzaho alleges that there are inconsistent findings between the *Setako* and *Renzaho* cases regarding Witness BUO's purported

⁴¹ Third Motion, paras. 12, 13, 23, p. 5, Annexes A-D. See also *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgement and Sentence, dated 25 February 2010 and filed 1 March 2010 ("*Setako* Trial Judgement"), paras. 429-438.

⁴² Third Motion, paras. 1-26, p. 5.

⁴³ Response to Third Motion, paras. 2, 3, 9.

⁴⁴ Response to Third Motion, paras. 5-8.

⁴⁵ Response to Third Motion, paras. 14, 15, 17.

⁴⁶ Third Motion, paras. 24-26.

position as “vice-president of the *Interahamwe* group in 1994”.⁴⁷ In particular, he submits that the *Setako* Trial Chamber did not believe Witness BUO’s claim that he was “the vice-president of the *Interahamwe* in 1994”, whereas the *Renzaho* Trial Chamber did believe him.⁴⁸ However, Mr. Renzaho does not support these arguments with any references to the Trial Judgement or transcripts in the *Renzaho* case.

25. The Appeals Chamber notes that Witness BUO testified as Witness SON in the *Setako* case. The *Setako* Extracts show that the *Setako* Trial Chamber rejected Witness SON’s purported claim to be the vice-president of his local *Interahamwe* group (and not, as Mr. Renzaho submits, of “the *Interahamwe*” generally).⁴⁹ In the *Renzaho* case, Witness BUO also claimed to be the vice-president of his local *Interahamwe* group.⁵⁰ A review of the *Renzaho* Trial Judgement does not reveal any evaluation in respect of this claim and generally describes Witness BUO as a member of the *Interahamwe* in Rugenge sector.⁵¹ In one instance, however, the Trial Chamber refers to Witness BUO as an *Interahamwe* “leader”.⁵² Nevertheless, both the *Setako* and the *Renzaho* Trial Chambers treated the evidence of this witness with caution, refusing to accept his testimony without corroboration.⁵³ The Appeals Chamber therefore finds no material inconsistency between these Trial Judgements. As such, had the *Setako* Extracts been adduced at trial, they could have had no impact on the Trial Chamber’s assessment of Witness BUO’s credibility.

26. With respect to the Witness BUO Information, the Appeals Chamber notes that it was admitted at trial as Exhibits D14A and P73. The request for admission on appeal is therefore moot.

⁴⁷ Third Motion, para. 3 (“Il lui a également été rapporté [à l’équipe de défense de Monsieur Renzaho] qu’[redacted] n’avait jamais été vice-président des *Interahamwe* pendant les événements de 1994, comme BUO a pu le déclarer à la barre, et comme cela a été retenu dans le Jugement de Monsieur Renzaho.”). See also Third Motion, para. 9 (“[L’équipe de défense] a rencontré [au Rwanda] des personnes lui confirmant qu’[redacted] n’était pas vice-président des [I]nterahamwe en 1994, ce qui a toujours été soutenu par les témoins de la défense de Monsieur Renzaho, et ce que la Chambre de première instance a par ailleurs relevé dans le Jugement *Setako*, (et ce en totale contradiction avec les conclusions de la Chambre dans l’affaire *Renzaho*.)” (with reference to *Setako* Extracts only)).

⁴⁸ Third Motion, paras. 3, 9.

⁴⁹ See Third Motion, Annex D, p.1. See also *Setako* Trial Judgement, para. 432 (“Differences between Witness SON’s testimony and other evidence raise some concern. He claimed to be the vice-president of his local *Interahamwe* group which gave him a supervisory role over area roadblocks. Defence Witnesses KBC, KCM and KDY, who lived in the area, disputed that he held a position of authority or manned area roadblocks. Their evidence is consistent with the witness’s own trial judgment in Rwanda, which rejects Witness SON’s claim of authority in the local militia group. These differences go to the core of Witness SON’s basis of knowledge for asserting that *Setako* instructed the killing of two girls at the *Péage* roadblock in May 1994. It is not easy to understand why the witness would claim an official position in the *Interahamwe* if it were not the case since it would potentially expose him to more serious sanctions.” (citations omitted)).

⁵⁰ Witness BUO, T. 25 January 2007 p. 54 (closed session) (“I was appointed by Angeline. She told Claude, ‘This is your vice-president.’ And I was appointed vice-president of the *Interahamwe* of Rugenge, and I was appointed by Angeline in the presence of the members of our group. And when I joined the group, there were 38 young people who were less than 35 years old. When I was appointed vice-president, there were 110 members in our group.”).

⁵¹ Trial Judgement, paras. 413, 556, 645.

⁵² Trial Judgement, para. 594. See also Trial Judgement, para. 587 (summary of Witness BUO’s evidence), referring to Witness BUO, T. 25 January 2007 pp. 52-55 (closed session).

⁵³ *Setako* Trial Judgement, paras. 72, 433; Trial Judgement, paras. 410-414, 417-420, 439, 583, 594, 648, 652, 660.

27. Finally, with respect to the Identity Card, the Appeals Chamber notes that Mr. Renzaho makes no effort to demonstrate that the requirements of admissibility under Rule 115 of the Rules have been met. As such, the Appeals Chamber is not in a position to determine the availability of the document at trial. In any event, in light of Mr. Renzaho's submission that identity cards issued in Rwanda after 1994 no longer included the names of adult children, such as Witness BUO, the Appeals Chamber finds that had the Identity Card been adduced at trial, it could not have had an impact on the Trial Chamber's assessment of Witness BUO's credibility.

28. Accordingly, the Appeals Chamber finds that denying the admission of these materials on appeal will not result in a miscarriage of justice. Therefore, Mr. Renzaho's request is dismissed.

2. Request for Investigation

29. Mr. Renzaho seeks an investigation pursuant to Rule 77 of the Rules. The Appeals Chamber notes, however, that the circumstances described by Mr. Renzaho which form the basis of his request for an investigation appear to be an allegation that Witness BUO provided false testimony. Such an allegation is governed by Rule 91 rather than Rule 77 of the Rules. Rule 91 of the Rules provides Chambers with the discretion to order an investigation where there are "strong grounds for believing that a witness has knowingly and wilfully given false testimony".⁵⁴ The Appeals Chamber will accordingly consider Mr. Renzaho's request pursuant to Rule 91 of the Rules.

30. The Appeals Chamber is not satisfied with the submissions presented by Mr. Renzaho. His contentions are largely based on information his Defence team purportedly received from questioning people during recent investigations in Rwanda.⁵⁵ These contentions are not, however, supported by any written evidence or signed statements.

31. In addition, as mentioned above, Mr. Renzaho alleges that there are inconsistent findings between the *Setako* and *Renzaho* cases.⁵⁶ The Appeals Chamber considers that inconsistent findings of Trial Chambers, even if demonstrated, cannot alone constitute "strong grounds for believing that a witness has knowingly and wilfully given false testimony" under Rule 91(B) of the Rules.

32. Mr. Renzaho's allegations are also based on the fact that none of the names of the children contained in the Identity Card matches Witness BUO's purported name.⁵⁷ Mr. Renzaho acknowledges, however, that as of 1994, identity cards issued in Rwanda no longer included the

⁵⁴ Rule 91(B) of the Rules.

⁵⁵ Third Motion, paras. 2-10.

⁵⁶ See *supra*, para. 24.

⁵⁷ Third Motion, paras. 12-19.

names of adult children, which would have been the case of Witness BUO.⁵⁸ He accordingly requests the Appeals Chamber's assistance in accelerating the administrative procedures with the Rwandan authorities to acquire a full list of the names of the children of the woman Witness BUO identified as his mother.⁵⁹ The Appeals Chamber considers this to constitute an inappropriate ground for requesting an investigation under Rules 77 or 91 of the Rules. With no indication that Mr. Renzaho had insufficient time to conduct all required investigations into such matters before and during the trial, and in the absence of any evidence that the Rwandan authorities have been uncooperative on the issue, the Appeals Chamber rejects Mr. Renzaho's request for an investigation.

D. The Fourth Motion

33. The Trial Chamber found Mr. Renzaho guilty of murder as a crime against humanity, based on Article 6(1) of the Statute, for aiding and abetting and ordering the killings of Charles, Wilson, and Déglote Rwanga, who had been removed from the *Centre d'étude de langues africaines* ("CELA") on 22 April 1994.⁶⁰ The Trial Chamber's conclusion was based on the testimonies of Witnesses BUO, ACS, HAD, UI, and ACK.⁶¹

34. In his Fourth Motion, Mr. Renzaho seeks the admission of three judicial documents in Kinyarwanda concerning Prosecution Witness BUO and Alphonse Macumi ("BUO and Macumi Documents"),⁶² the existence of which he claims to have learned only when drafting his Appellant's Brief.⁶³ He submits that the BUO and Macumi Documents are exculpatory with respect to the deaths of Rose Rwanga's husband and children, on the basis of which he was convicted.⁶⁴ He contends that the BUO and Macumi Documents show that Mr. Renzaho was not involved in the killing of Mrs. Rwanga's husband and children and that they were removed from the Saint Paul pastoral centre⁶⁵ and not from CELA as found by the Trial Chamber,⁶⁶ thereby contradicting Prosecution Witness ACK's testimony.⁶⁷ Mr. Renzaho further contends that the BUO and Macumi

⁵⁸ Third Motion, para. 17.

⁵⁹ Third Motion, paras. 20, 21.

⁶⁰ Trial Judgement, para. 789. The Trial Chamber also found him guilty as a superior under Article 6(3) of the Statute for these killings.

⁶¹ Trial Judgement, paras. 437-440.

⁶² Fourth Motion, para. 1, p. 3, Annexes A-C.

⁶³ Fourth Motion, paras. 2, 3.

⁶⁴ Fourth Motion, paras. 1, 4.

⁶⁵ Fourth Motion, para. 6.

⁶⁶ See Trial Judgement, paras. 439, 440, 787, 789. See also Fourth Motion, para. 5.

⁶⁷ Fourth Motion, para. 7.

Documents support his argument on appeal that there are three different official theories about the death of the Rwanga family members, in violation of the principle of *in dubio pro reo*.⁶⁸

35. The Prosecution responds that Mr. Renzaho fails to make any argument to show that the purported additional evidence was not available at trial in any form whatsoever, and that he cannot claim that he exercised any diligence to procure it at trial.⁶⁹ It further submits that Mr. Renzaho does not show how the proffered documents are capable of affecting the Trial Chamber's findings or his convictions and sentence, as other hypotheses for the Rwanga killings were offered at trial, and rejected by the Trial Chamber.⁷⁰

36. The Appeals Chamber considers the BUO and Macumi Documents to bear sufficient *prima facie* relevance and reliability. The Appeals Chamber also considers them to bear *prima facie* authenticity, as the Prosecution raises no issue in this regard and confirms that the documents were "extracted from a Rwandan case file No. RP199/CSK, concerning the trial of Prosecution Witness BUO, one Alphonse Macumi and 55 other defendants" ("Macumi Case File").⁷¹ The judgement in that case was rendered on 23 October 2003 ("Macumi Judgement"), and excerpts of the Macumi Judgement were tendered into evidence during Mr. Renzaho's trial.⁷² Mr. Renzaho therefore fails to demonstrate that the BUO and Macumi Documents contained in the Macumi Case File could not have been discovered through the exercise of due diligence. Accordingly, for the purpose of Rule 115 of the Rules, the Appeals Chamber considers that the BUO and Macumi Documents were available at trial. Consequently, they can only be admitted as additional evidence on appeal if Mr. Renzaho demonstrates that these documents *would* have had an impact on the verdict.

37. The Appeals Chamber notes that Mr. Renzaho cross-examined Witness ACK with the Macumi Judgement, which suggested that Charles, Wilson, and Déglote Rwanga were killed at the Sainte Famille church rather than CELA.⁷³ The Trial Chamber considered the evidence suggesting that Charles Rwanga and his sons were not among those removed from CELA on 22 April 1994,⁷⁴

⁶⁸ Fourth Motion, paras. 8, 9. The Appeals Chamber notes that Mr. Renzaho mistakenly refers to a Fifteenth Ground of Appeal (despite having advanced no more than 13) and a violation of the principle of *in dubio "proprio"*. A review of his filings on appeal show that he is referring to his Ninth Ground of Appeal relating to the events at CELA. See Notice of Appeal, para. 95; Appellant's Brief, paras. 343-362.

⁶⁹ Response to Fourth Motion, paras. 3-5.

⁷⁰ Response to Fourth Motion, paras. 6-8.

⁷¹ See Response to Fourth Motion, para. 4. See also Response to Fourth Motion, para. 1.

⁷² See Exhibits D16 and D40.

⁷³ Witness ACK, T. 6 March 2007 pp. 57-60.

⁷⁴ Trial Judgement, para. 438 ("There is Defence evidence suggesting that Charles Rwanga and his sons were not among those removed from CELA on that day. In particular, Witness WOW heard that Rwanga had been killed on 7 April, which means weeks before the attack. However, as the witness did not see the alleged 7 April attack or Charles Rwanga's body afterwards, his testimony carries limited weight. Witness ACK was confronted with the Rwanda trial judgement of Alphonse Macumi, which concluded that Macumi 'had Charles Rwanga and his children killed ... after having taken them out of Sainte Famille'. The witness maintained that they were removed from CELA and not Sainte

but concluded nevertheless that the “consistent first-hand accounts of Witnesses BUO, UI, ACS and HAD, among other evidence,” confirmed that they were.⁷⁵ As such, the Appeals Chamber considers that the BUO and Macumi Documents would not have had any impact on the Trial Chamber’s verdict if they had been adduced at trial.

38. Accordingly, the Appeals Chamber finds that denying the admission of these materials on appeal will not result in a miscarriage of justice. Therefore, Mr. Renzaho’s request is dismissed.

E. Sanctions

39. The Prosecution contends that the Motions are frivolous and constitute an abuse of process and accordingly requests the imposition of sanctions on Mr. Renzaho’s Counsel.⁷⁶ Mr. Renzaho has not replied.

40. Rule 73(F) of the Rules provides that “a Chamber may impose sanctions against Counsel if Counsel brings a motion, including a preliminary motion that, in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof.” The Appeals Chamber finds Counsel’s failure to satisfy many of the requirements of Rule 115 of the Rules to be highly problematic. However, the Appeals Chamber does not consider that this rises to the level of professional negligence in the present case.⁷⁷

Famille, expressing the view that this portion of the judgment was incorrect and provided by other persons than her. The Chamber finds her explanation reasonable.” (citations omitted)). *See also* Trial Judgement, para. 50.

⁷⁵ Trial Judgement, para. 439.

⁷⁶ Response to First Motion, paras. 3, 22; Response to Second Motion, paras. 3, 13; Response to Third Motion, paras. 14, 15, 17; Response to Fourth Motion, paras. 2, 10, 12.

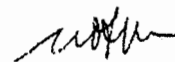
⁷⁷ *Cf. Dragomir Milošević* Appeal Decision of 8 September 2009, para. 17, in which case the Appeals Chamber found that “Milošević’s Counsel’s failure to at least attempt to satisfy any of the requirements of Rule 115 of the Rules, especially after his previous motions filed under the same provision were rejected for similar reasons, amounts to professional negligence.” (Emphasis added and citation omitted).

IV. DISPOSITION

41. For the foregoing reasons, the Appeals Chamber **DISMISSES** Mr. Renzaho's Motions.

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

Done this twenty-seventh day of September 2010,
in The Hague,
The Netherlands.



Judge Carmel Agius
Presiding

[Seal of the Tribunal]

