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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 20 September 2011

THE PROSECUTOR

v.

Callixte NZABONIMANA
Case No. ICTR-98-44D-T

DECISION ON DEFENCE MOTION FOR RECONSIDERATION OR CERTIFICATION OF THE DECISION ON SECOND MOTION FOR THE ADMISSION OF WRITTEN WITNESS STATEMENTS

(Rules 73 (B), 89 (C) and 92 bis of the Rules of Procedure and Evidence)

Office of the Prosecutor
Paul Ng'arua
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Defence Counsel
Vincent Courcelle-Labrousse
Philippe Larochelle

INTRODUCTION

1. On 21 April 2011, the Defence filed a second motion seeking to adduce a number of written witness statements pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence ("Rules"), and for leave to vary its witness list under Rule 73 *ter* (E) so as to include the authors of the documents it sought to tender to the list ("Second 92 *bis* Motion").[1]

2. On 13 July 2011, the Trial Chamber issued a Decision denying the Second 92 *bis* Motion in its entirety ("Impugned Decision").[2]

3. On 20 July 2011, the Defence filed a motion requesting reconsideration or certification to appeal the Impugned Decision ("Motion").[3]

4. On 23 July 2011, the Defence filed a corrigendum to "correct certain errors" in the Motion ("Corrigendum").[4]

5. On 26 July 2011, the Prosecution filed its response to the Defence Motion ("Response").[5]

6. On 29 July 2011, the Defence filed a reply to the Prosecution Response ("Reply").[6]

SUBMISSIONS OF THE PARTIES

Motion

Reconsideration

7. The Defence argues that in deciding not to allow the statements of Witnesses T93, T171, T10 and CNAL into evidence, the Trial Chamber abused its discretion and committed an

[1] *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Second Motion for the Admission of Written Witness Statements, 21 April 2011.
[2] *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Decision on Nzabonimana's Second Motion for the Admission of Written Witness Statements, 13 July 2011.
[3] *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Urgent Motion for Reconsideration or Certification of the Decision on Nzabonimana's Second Motion for the Admission of Written Witness Statements, Dated 13 July 2011, ("Instant Motion"), 20 July 2011.
[4] *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Corrigendum to "Nzabonimana's Urgent Motion for Reconsideration or Certification of the Decision on Nzabonimana's Second Motion for the Admission of Written Witness Statements, Dated 13 July 2011, dated 20 July 2011", ("Corrigendum"), 23 July 2011.
[5] *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Urgent Motion for Reconsideration or Certification of the Decision on Nzabonimana's Second Motion for the Admission of Written Witness Statements, Dated 13 July 2011, ("Response"), 26 July 2011.
[6] *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Reply to Prosecutor's Response to Nzabonimana's Urgent Motion for Reconsideration or Certification of the Decision on Nzabonimana's Second Motion for the Admission of Written Witness Statements, Dated 13 July 2011, ("Reply"), 29 July 2011.

error of law. It further argues that new circumstances have arisen, warranting reconsideration.[7]

Statement of Witness T93

8. The Defence notes that the Trial Chamber was satisfied that the Defence had met the threshold requirements for admission into evidence of Witness T93's statement pursuant to Rule 92 *bis* (A) and (B), but declined to admit the statement[8] because Witness T93 refused to testify in Arusha due to security concerns, and that this would deny the Prosecution the opportunity to cross-examine the witness thus causing prejudice to it.[9] The Defence is of the view that the Chamber abused its discretion in refusing to reasonably assess Witness T93's fears. In doing so, it denied Nzabonimana an opportunity to adduce relevant evidence thus depriving him of a fair trial.[10] It also asserts that cross-examination is not a condition for admission of evidence under Rule 92 *bis* although the Chamber may require cross-examination.[11] It further submits that the Chamber did not provide an opportunity to the Witness and Victims Support Section ("WVSS") to investigate Witness T93's fears nor did it consider the possibility of hearing the witness via video-link or increasing protective measures for the witness.[12] It contends that this shows that the Chamber abused its discretion and favours the Prosecution.[13] The Defence reiterates that Witness T93's fears are real and justified.[14]

9. In support of its argument that new circumstances have arisen, the Defence refers to a Human Rights Watch report issued on 31 May 2011 documenting issues relating to witness intimidation. According to the Defence, this document "outlines the pervasive and prevalent intimidation, prosecution and harassment of defence witnesses in Rwanda."[15]

Statements of Witnesses T171 and T10 ("T171 and T10")

10. The Defence asserts that the Trial Chamber erred in finding that Mr. James Leavy ("Mr. Leavy") was not authorised to take the statements of Witnesses T171 and T10 for the

[7] Motion, para. 13.
[8] Motion, para. 15.
[9] Motion, paras. 15-16.
[10] Motion, para. 21.
[11] Motion, para. 19.
[12] Motion, para. 19.
[13] Motion, para. 18.
[14] Motion, para. 24.
[15] Motion, para. 23.

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purpose of their admission under Rule 92 *bis* (B).[16] It submits that Mr. Leavy is a member of the Ordre du Barreau of Quebec and commissioned to administer oaths in Quebec, Canada pursuant to Article 219 of the *Court of Justice Act*.[17] It thus states that Mr. Leavy is authorised under Canadian law to take statements, regardless of the location in which the statements are made.[18]

11. Furthermore, the Defence submits that the Chamber erred in finding that the statements of Witnesses T171 and T10 go to proof of the acts and conduct of the Accused.[19] Citing the Appeals Decision in *Galić*,[20] the Defence notes that under Rule 92 *bis* "the party seeking the admission must show that the statement goes to proof of a matter other than the acts and conduct of the Accused "as charged in the Indictment."[21] It argues that the *Galic* Decision can be distinguished from the *Simba* Decision[22] which noted that evidence of alibi "goes directly to the acts or conduct of the Accused" as relied on by the Chamber in the Impugned Decision.[23] It argues that in *Simba*, the rejected statement concerned a witness who stated "she did not see the Accused during the massacre at the Kaduha parish," which relates to "the fact that she did not see the Accused commit an act as alleged under the Indictment."[24] In contrast, this Chamber accepted the statement of Witness T93 in which he said that he did not attend a meeting specifically listed in the Indictment, and therefore that his statement did not go to the acts and conduct of the Accused.[25] The Defence insists the statements of Witnesses T171 and T10 do not relate to any allegation in the Indictment but to the witnesses having seen the Accused at the French Embassy at a specified date and time.[26] The statements do not go to the acts and conduct of the Accused "as alleged in the Indictment" but rather to his acts and conduct relating to his alibi.[27] Thus, it submits that the Chamber erred in ruling that these statements touch on acts and conducts of the Accused as alleged in the Indictment.[28]

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[16] Motion, para. 25-26, 33.
[17] Motion, para. 31.
[18] Motion, para. 27.
[19] Motion, paras. 34-36.
[20] Prosecutor v. Galic, Decision on Interlocutory Appeal Concerning Rule 92bis (C), AC, 7 June 2002, paras. 9-14.
[21] Motion, para. 34 (emphasis added).
[22] *The Prosecutor v. Simba*, ICTR-01-76-T, Decision on the Admission of a Written Statement, 25 January 2005, para. 5; see also Impugned Decision, para. 35.
[23] Impugned Decision, para. 35.
[24] Motion, para. 35.
[25] Motion, para. 36 *citing* Impugned Decision, paras. 37-38
[26] Motion, para. 37.
[27] Motion, para. 38.
[28] Motion, paras. 38-40.

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12. Further, the Defence requests that the Chamber admit the statements of Witnesses T171 and T10 in the interest of justice as it only called a limited number of witnesses in support of its alibi,[29] and recalls its prior attempts to move the Chamber to call more alibi witnesses.[30] It reiterates the importance of the statements of Witnesses T171 and T10 and points to difficulties it faced in obtaining the statement of Witness T171 and obtaining her presence at trial.[31]

Statement of Prosecution Witness CNAL ("Witness CNAL")

13. In its initial Motion, the Defence sought to adduce three statements provided by Prosecution Witness CNAL to *amicus curiae* before and in the course of an ancillary investigation into whether members of the Defence team committed contempt against this Tribunal.[32] However, the Defence failed to attach the statements sought for admission under Rule 92 *bis* to the initial motion. In the instant Motion, the Defence apologises for attaching the *amicus curiae* report rather than the relevant statements sought to be admitted.[33] It now attaches to the instant Motion the three statements of Witness CNAL[34], arguing that this constitutes a material change in circumstance warranting reconsideration.[35]

Certification to Appeal

14. The Defence submits that the issues at hand significantly affect the fair and expeditious conduct of proceedings and materially advance the proceedings because admitting the statements of Witnesses T93, T171, T10 and CNAL will ensure the Accused's right to a fair trial.[36] It asserts that these statements particularly that of Witnesses T171 and T10 corroborate the Accused's alibi and will provide the Chamber with additional evidence for its deliberations on the parties' closing briefs.[37] It further notes that the statement of Witness T93 concerns allegations in paragraph 44 of the Indictment and that Witness CNAL's

[29] Motion, paras. 43.
[30] The Oral Decision of 7 April 2011 allowing the Defence to call two additional alibi witnesses. *Also see* Decision on Nzabonimana's Motion for Subpoena, Protective Measure and Cooperation of France in Respect of Prospective Witness T171, 10 May 2011.
[31] Motion, para. 46. *Also see* Decision on Prosecution Motion to Order the Defence to Drop Witnesses T171 and T400, 3 May 2011 and Decision on Nzabonimana's Motion for Subpoena, Protective Measure and Cooperation of France in Respect of Prospective Witness T171, 10 May 2011.
[32] Motion, paras. 94-100.
[33] Motion, para. 47.
[34] Motion, Annexes 3-5.
[35] Motion, para. 47.
[36] Motion, paras. 49-50.
[37] Motion, para. 51.

statements challenge the credibility of Prosecution witnesses.[38] Thus, it contends that the immediate resolution of the issue of admissibility of these statements prior to the resumption of the proceedings in September 2011 "would materially advance the proceedings..." so that in event related issues arise these can be addressed in September 2011 without causing any delays in this case.[39]

Response

15. The Prosecution submits that the Defence has not met the test for reconsideration and certification, because: i) the Defence misdirected itself on or failed to appreciate the legal basis upon which the Trial Chamber rejected the admission into evidence of the statements of Witnesses T93, T171 and T10; ii) the Defence's failure to append the statements of Witness CNAL to its first Motion does not give rise to a right for reconsideration or certification; iii) the statements of Witness CNAL are the subject of a parallel contempt proceedings and thus form part of the trial record which are available for the Chamber's consideration; iv) there are no new material circumstances warranting review of the Rule 92 *bis* applications of Witness CNAL's statements.

Statement of Witness T93

16. In respect of Witness T93's statement, the Prosecution submits that the Defence understanding of Rule 92 *bis* is flawed.[40] The Prosecution recalls that in the Impugned Decision although the Chamber found that Witness T93's statement did not go to acts and conduct of the Accused, the statement nevertheless delved into "matters that lie at the heart of paragraph 44 of the Indictment", and "relates to a live and important issue between the parties, as opposed to a peripheral one."[41] As the issues raised in Witness T93's statement are of a nature that a party would be entitled to cross-examine,[42] the Chamber was right in denying admission of Witness T93's statement without affording the Prosecution an opportunity to cross-examine him.[43] The Prosecution recalls that the Accused is not only charged with genocide with respect to paragraph 44 of the Indictment, but also with conspiracy to commit genocide and direct and public incitement to commit genocide. Hence, Witness T93's denial that he attended a meeting testified to by Prosecution Witnesses

[38] Motion, para. 51.
[39] Motion, para. 52.
[40] Response, paras. 19-24.
[41] Response, para. 26, and 31 citing Impugned Decision, para. 39.
[42] Response, para. 27.
[43] Response, para. 28.

CNAK and CNAJ, and that killings occurred following the meeting, is an issue that goes to the heart of its case.[44] The Prosecution adds that the Defence is not prejudiced by the non-admission of Witness T93's statement as it has called Witnesses T92, T95, T97 and T98 to rebut the evidence of Witnesses CNAK and CNAJ.[45] In response to the Defence argument that the Chamber failed to explore alternative means of testifying, such as hearing video-link testimony of Witness T93 or increasing protective measures, the Prosecution argues that the Defence has failed to establish any basis for special consideration of Witness T93's circumstances.[46] The Prosecution also rejects the Defence submission that the Human Rights Watch report documenting witness intimidation is a new circumstance warranting reconsideration.[47]

Statements of Witnesses T171 and T10

17. The Prosecution stresses that the statements of Witnesses T171 and T10 "support the alibi of the Accused and therefore go to the acts and conducts of the Accused as charged in the Indictment".[48] In paragraphs 49 to 53 of is Response, the Prosecution contends that the various Trial Chamber's Decisions have settled the issues pertaining to the number of alibi witnesses the Defence was allowed to call. It thus argues that the Defence has suffered no prejudice in presenting its alibi since six alibi witnesses have already been heard by the Chamber. It concludes on this issue that the Defence has not demonstrated any exceptional circumstances warranting reconsideration nor has it laid any grounds for certification as this would entail reopening the Defence case and the introduction of contentious evidence at this stage of the proceedings.[49]

Statements of Witness CNAL

18. The Prosecution argues that adding to this Motion those statements of Witness CNAL that it failed to attach to its Second 92 *bis* Motion does not amount to a material change in circumstances. The failure of the Defence to exercise due diligence cannot give rise to a right to reconsideration or certification. It recalls that these are exceptional remedies for which the urgency and grave circumstances requiring redress must be demonstrated by a party.[50]

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[44] Response, para. 31.
[45] Response, paras. 32-33, 45.
[46] Response, paras. 40-45.
[47] Response, paras. 34-39.
[48] Response, paras. 46-47.
[49] Response, paras. 55-56.
[50] Response, paras. 59-61.

19. In conclusion, the Prosecution submits that the Defence motion be denied but, should the Motion succeed, it alternatively requests to be allowed to cross-examine the witnesses.

Reply

20. In respect of the statement of Witness T93, the Defence reiterates that the ability of the Prosecution to cross-examine a witness is not a condition for the admission of a written statement pursuant to Rule 92 *bis*, and thus opines that the Prosecution's comprehension of the law is flawed.[51] It further notes that because the statement of Witness T93 is cumulative and corroborates the evidence of four other defence witnesses, the denial of its admission is thus prejudicial to the defence.[52] The Defence elaborates how the Human Rights Watch report is proof of Witness T93's legitimate fear to testify before this Tribunal.[53]

21. The Defence also reiterates its argument that failure to admit the statements of T171 and T10 is prejudicial to the defence.[54] It further observes the Prosecution does not take issue with Mr. Leavy's competence to take the statements of Witnesses T171 and T10.[55]

22. Finally, the Defence reiterates its apology for not attaching the statements of Witness CNAL to its first motion and its argument that the attachment of Witness CNAL's statements to the Motion constitutes a new circumstance warranting reconsideration. It additionally argues that the Prosecution was not prejudiced by the Defence's failure to attach the document, since the Prosecution submits that these statements are part of the trial record.[56]

DELIBERATIONS

Applicable Law

Reconsideration

23. As affirmed in *Karemera*, Trial Chambers have the "inherent power" to reconsider their own decisions, under the following "exceptional" circumstances:

    i. when a new fact has been discovered that was not known by the Trial Chamber;
    ii. where new circumstances arise after the original decision;

[51] Reply, paras. 9-11.
[52] Reply, para. 12.
[53] Reply, paras. 13-18.
[54] Reply, para. 22.
[55] Reply, para. 23.
[56] Reply, para. 26.

iii. where there was an error of law or an abuse of discretion by the Trial Chamber resulting in an injustice.[57]

The Chamber recalls that it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.[58]

Certification to Appeal

24. Rule 73 (B) states:

> Decisions rendered on... motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

Thus, in order to grant Certification to appeal one of its Decisions, a Trial Chamber must find: 1) that the decision in question involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and 2) that an immediate resolution of the issue by the Appeals Chamber may, in the opinion of the Trial Chamber, materially advance the proceedings.[59] Even where both factors are present, Certification is not automatic, but at the discretion of the Trial Chamber,[60] and Certification remains an exceptional measure.[61] As was noted in *Ntahobali*, "Rule 73(B)... provides... that in exceptional circumstances, the Trial Chamber may—not must—allow interlocutory appeals of [its] decisions".[62]

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[57] *See* e.g., *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera*, ICTR-99-44-T, Decision on Reconsideration of Protective Measures for Prosecution Witnesses, 30 October 2006, para. 2; *Karemera*, ICTR-99-44-T, Decision on Reconsideration of Admission of Written Statements in lieu of Oral Testimony and Admission of the Testimony of Prosecution Witness GAY, 28 September 2007, paras. 10-11.

[58] *Karemera et al.*, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions (TC), 8 November 2007.

[59] *Prosecutor v. Ngirabatware*, ICTR-99-54-T, Decision on Defence Motion for Certification to Appeal the Trial Chamber Decision dated 17 September 2009, 5 October 2009, para.16; citing *Prosecutor v. Milošević*, IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for *Voir Dire* Proceeding, 20 June 2005, para. 2.

[60] *Ngirabatware*, para. 17. See also *Prosecutor v. Tolimir*, IT-05-88/2-PT, Decision on Motion for Certification to Appeal the 11 December Oral Decision, 15 January 2008, para. 4.

[61] *Prosecutor v. Karemera et al.*, ICTR-98-44-NZ, Decision on Joseph Nizorera's Application for Certification to Appeal Decision on the 24th Rule 66 Violation, 20 May 2009, para. 2. See also *Prosecutor v. Nshogoza*, ICTR-07-91-T, Decision on Defence Motion for Certification of the Trial Chamber's Decision on Defence Urgent Motion for a Subpoena to Ms. Loretta Lynch, 19 February 2009, para. 4; *Ngirabatware*, para. 17.

[62] *Prosecutor v. Ntahobali and Nyiramasuhuko*, ICTR-97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible", 18 March 2004, paras. 13-15.

Analysis

Reconsideration

Whether a "new fact" has been discovered?

25. The Trial Chamber dismisses the Defence argument that the HRW report published on 31 May 2011 documenting witness intimidation constitutes a new circumstance warranting reconsideration of the admission of the statement of Witness T93. Having reviewed the HRW report, the Chamber observes that the report focuses on issues relating to witnesses in Rwanda and not before this Tribunal in Arusha. The Chamber thus considers the Defence argument that the Human Rights Watch report is "solid proof" of Witness T93's legitimate fear to testify before this Tribunal to be misconstrued.

Whether "new circumstances arise after the original decision"?

26. In respect of the statements of Witness CNAL, the Trial Chamber notes the Defence apology for attaching the *amicus curiae* report rather than the relevant statements of Witness CNAL sought to be admitted. It now attaches the relevant statement, arguing this is a material change in circumstances warranting reconsideration. The Trial Chamber observes that prior to filing its initial Motion the Defence was in possession of the statement of Witness CNAL. Thus, the Trial Chamber does not consider the current attachment of the relevant statements of Witness CNAL by the Defence to be a material change in circumstance warranting reconsideration.

Whether there was an error of law?

27. The Defence asserts that the Trial Chamber erred in finding that Mr. Leavy was not authorised to take the statements of Witnesses T171 and T10 for the purpose of their admission under Rule 92 *bis* (B).[63] It submits that Mr. Leavy[64] is authorised under Canadian law to take such statements, regardless of the location.[65]

28. However, the Chamber recalls that it denied admission of the statements of Witnesses T171 and T10 principally because the statements were found to go to proof of the acts and conduct of the accused. The Trial Chamber is not persuaded that it erred in relying on the *Simba* Decision which found that evidence of alibi "goes directly to proof of the acts or conduct of

[63] Motion, para. 25-26, 33.
[64] According to the Defence, Mr. Leavy is an enrolled member of the enrolled on the Ordre du Barreau of Quebec and commissioned to administer oaths in Quebec, Canada pursuant to Article 219 of the *Court of Justice Act*. Also see Motion, para. 31.
[65] Motion, para. 27.

the Accused".[66] Moreover, as the Defence has been able to provide ample evidence regarding the alibi of the accused, its request for admission of these statements "in the interests of justice" is not only unwarranted but does not satisfy the requirements for reconsideration.

Whether the Chamber abused its discretion?

29. The Defence submits that the Chamber abused its discretion in refusing to accept and reasonably assess Witness T93's fears for his personal security, thereby denying Nzabonimana an opportunity to adduce evidence and depriving him of a fair trial.[67] The Trial Chamber recalls that in the Impugned Decision, it expressed concern about Witness T93's refusal to appear to testify in Arusha, but took into consideration that his statement "delve[s] into matters that lie at the heart of paragraph 44 of the Indictment."[68] The Trial Chamber further recalls that in paragraph 39 of the Impugned Decision it stated that "[...] to allow the adduction of such a statement without affording the Prosecution the opportunity to cross-examine T93 regarding testimony that clearly "relates to a live and important issue between the parties, as opposed to a peripheral one"[69] would cause undue prejudice to the Prosecution, and therefore the Chamber declines to exercise its discretion, pursuant to Rule 92 *bis* (E), to admit the statement of T93 into the evidentiary record of the present proceedings. In the present circumstances, the Trial Chamber therefore considers that the Defence has not demonstrated that the Trial Chamber abused its discretion.

30. In conclusion, the Trial Chamber is not satisfied that the Defence has demonstrated that the reconsideration of the Impugned Decision in relations to the statements of witnesses T93, T171, T10 and CNAL is warranted. Consequently, the Trial Chamber dismisses the Defence request for reconsideration of the Impugned Decision.

[66] *Prosecutor v. Simba*, ICTR-01-76-T, Decision on the Admission of a Written Statement, 25 January 2005, para. 5.
[67] Motion, para. 21.
[68] Impugned Decision, para. 39.
[69] *Karemera*, Nzirorera Decision, para. 7; *Karemera*, Decision on "Requête de Matthieu Ngirumpatse visant à l'Admission de Déclarations sur le Fondement de l'Article 92 *Bis* du Règlement", 1 September 2010, para. 6 ("Ngirumpatse Decision").

Certification to Appeal

31. To support its request for leave to appeal, the Defence contends that admission of the statements of Witnesses T93, T171, T10 and CNAL will not only ensure the Accused's right to a fair trial,[70] but also provide the Chamber with additional evidence.[71] According to the Defence, this is an issue that has a significant bearing on the fair and expeditious conduct of proceedings and [...] materially advance the proceedings.[72]

32. Having weighed the submissions advanced by the Defence, the Chamber is not satisfied that the Defence, apart from rehearsing the arguments it made in its initial motion, has offered cogent arguments in support of its contention that failure to admit the evidence highlighted above will vitiate the fairness of the proceedings. Under these circumstances, the Trial Chamber is therefore not convinced that the issue raised by the Defence would significantly affect the expeditious conduct of proceedings or that immediate appellate intervention would materially advance the instant proceedings, particularly when the present case is closed. According, the Trial Chamber denies the Defence request for certification.

FOR THESE REASONS, THE TRIAL CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 20 September 2011, done in English.

Solomy Balungi Bossa	Bakhtiyar Tuzmukhamedov	Mparany Rajohnson
Presiding Judge	Judge	Judge

[Seal of the Tribunal]

[70] Motion, paras. 49-50.
[71] Motion, para. 51, The Defence notes that the statement of Witness T93 concerns allegations in paragraph 44 of the Indictment and that Witness CNAL's statements challenge the credibility of Prosecution witnesses, whilst the statements of Witnesses T171 and T10 corroborate the Accused's alibi.
[72] Motion, para. 52.