

ICTR-00-55C-T
(10-2-2012)
(9549-9546)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Lee Gacuga Muthoga, *Presiding*
Seon Ki Park
Robert Fremr

Registrar: Adama Dieng

Date: 10 February 2012

THE PROSECUTOR

v.

Ildéphonse NIZEYIMANA

CASE NO. ICTR-00-55C-T

JUDICIAL RECORDS/ARCHIVES
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DECISION ON THE PROSECUTOR'S MOTION TO MAKE THE TRIAL
RECORDS CONFORM TO THE EVIDENCE

Office of the Prosecution:
Drew White
Kirsten Gray

Defence Counsel for Ildéphonse Nizeyimana:
John Philpot
Cainnech Lussiaà-Berdou
Myriam Bouazdi
Sébastien Chartrand

INTRODUCTION

1. The trial commenced on 17 January 2011 with the opening statements of both the Prosecution and the Defence. The Prosecution closed its case-in-chief on 25 February 2011, after having called 38 witnesses. The Defence closed its case on 16 June 2011, after having called 38 witnesses, with an additional witness heard on 6 September 2011. The Prosecution completed its rebuttal case on 8 September 2011, after having called three witnesses. The Defence completed its rejoinder case on 21 September, after having called four witnesses. The Chamber heard the parties' closing arguments on 7 December 2011.

2. On 8 December 2011, the Office of the Prosecutor ("Prosecution") filed a motion in which it submits that the English and French transcripts of Prosecution Witness Antoinette Bizemenyera's testimony erroneously state that she was picked up from the Bank of Kigali's guest house in Butare and taken to Nizeyimana's residence in the evening rather than at 11:00 a.m., as reflected in the original Kinyarwanda transcript.¹ The Prosecution avers that the discrepancy may, if left unaddressed, have some bearing on the assessment of the credibility of Witness Bizimenyera's testimony.² For this reason, the Prosecution requests the Chamber to revise the identified portions of the English and French transcripts in order to accurately reflect her original testimony in Kinyarwanda.³

3. On 14 December 2011, the Defence team of the Accused, Ildéphonse Nizeyimana, ("Defence" and "the Accused" respectively) filed an *urgent interim motion* in which it submits that the Prosecution Motion should be rejected on the basis of having failed to append the relevant audio recordings to said motion.⁴ Alternatively, the Defence requests that the Chamber order the Prosecution to serve the recordings on the Defence, from which date the Defence shall have one week to respond to the Prosecution Motion.⁵ The Defence notes that if the Chamber decides to consult an interpreter on its own volition, or listen to the audio recordings to assist it in making a determination on this matter, that this occur in open session

¹ Prosecutor's Motion to Make the Trial Record conform to the Evidence ("Prosecution Motion"), 8 December 2011, paras. 3, 5, 7-8, 14-16.

² Prosecution Motion, paras. 9-11.

³ Prosecution Motion, para 17. The Prosecutor refers to the English transcripts of 8 September 2011, p. 40, line 37, p. 41, lines 1-2 and the French transcripts of 8 September 2011, p. 40, lines 28-31.

⁴ Urgent Interim Motion to Summarily Reject Prosecutor's Motion to Make the Trial Record Conform to the Evidence or Alternatively to Suspend Adjudication and the Running of Time for the Defence to Respond to Same Portion ("Defence Interim Motion"), 14 December 2011, paras. 5-6. The Defence notes that Prosecution similarly failed to serve the audio recordings on the Accused, without which the Accused cannot instruct its counsel. The Defence further notes that it attempted, on various occasions, to contact the Prosecution and obtain the audio recordings, to not avail. *See* paras. 7-9.

⁵ Defence Interim Motion, paras. 13-14.

in the presence of the Accused and his counsel.⁶ Lastly, the Defence submits that if the record is changed to reflect the correct translation, the parties should be granted the opportunity to present additional closing arguments on this issue.⁷

4. On 19 December 2011, the Prosecution responded to the Defence Interim Motion stating that the Defence failed to adduce any plausible reasons to justify its request for the rejection of the Prosecution Motion and that it has not established the basis upon which the Prosecution is required to serve the Defence with the audio recordings.⁸ The Prosecution further objects to the Defence request for the suspension of time to respond to the Prosecution Motion.⁹

DELIBERATIONS

5. The Chamber notes that the Prosecution submits that it identified an error in the English and French transcript of the hearing that took place on 8 September 2011. The Chamber further notes that this error, if corrected, affects arguments raised by the Defence in relation to the credibility of Prosecution Witness Bizimenyera.¹⁰ The Chamber considers it in the interest of justice to have the relevant portions of the English and French transcripts reviewed for accuracy, to ensure that the record properly reflects the evidence provided.¹¹

6. The Chamber notes that the Defence does not provide support for its contention that the Prosecution is bound to serve the audio recordings on it,¹² nor does it provide any justification as to why it did not request the Registry to provide the relevant portions of the transcript to it. The Chamber is not aware of any compelling reason that may have inhibited the Defence from accessing and reviewing such materials once they were identified in the

⁶ Defence Interim Motion, para. 15.

⁷ Defence Interim Motion, para. 16.

⁸ Prosecution's Response to Defence Interim Motion to Summarily Reject Prosecutor's Motion to Make the Trial Record Conform to the Evidence ("Prosecution Response"), 19 December 2011, paras. 2-4. The Prosecution notes that the recordings are part of the record and thus readily available to the Defence by request to the Registry.

⁹ Prosecution Response, para. 5.

¹⁰ See Nizeyimana Closing Brief, para. 123. The Defence challenges the credibility of Witness Bizimenyera noting that "[s]he also blurted out on one occasion that the family was picked up in the evening and not in the morning although she corrected it shortly after." See also T. 8 September 2011, p. 41.

¹¹ See *Nchamihigo v. Prosecutor*, Case No. ICTR-2001-63-A, Decision on Request for Correction of the Appeal Hearing Transcripts, 5 March 2010; *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on "The Appellant Jean-Bosco Barayagwiza's Corrigendum Motion Relating to the Appeal Transcript of 17th and 18th January 2007", 16 May 2007.

¹² The Defence relies on *Prosecution v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motions for Subpoena to Leon Mugesera and President Paul Kagame, 19 February 2008, para. 7, for the proposition that "all factual contentions must be supported by evidence if possible." While the Trial Chamber did find this in the *Karemera* case, it did so in the context of a sworn affidavit provided by the Defence, rather than from the witness himself. This decision did not involve evidence already contained on the record and readily available to the Defence upon request.

Prosecution Motion. Similarly, the Chamber fails to discern any merit in the Defence submission that any review by the Chamber of the recordings should occur in open court in the presence of the Accused and his counsel. In the interest of accuracy, the Chamber therefore instructs the Registry to analyze the matter and reflect the findings on the record.

7. Lastly, the Chamber finds that it has sufficient evidence before it to assess the credibility of Witness Bizimenyera's testimony. The Chamber thus does not consider it necessary to obtain further information from the parties thereon in the form of additional submissions, should the English and French transcripts be altered to reflect the change in time testified to by the Witness.

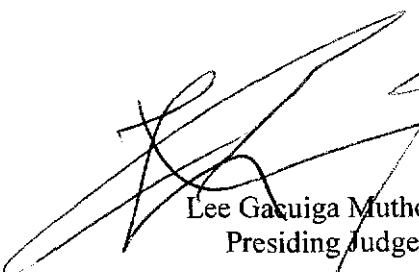
FOR THESE REASONS, THE CHAMBER

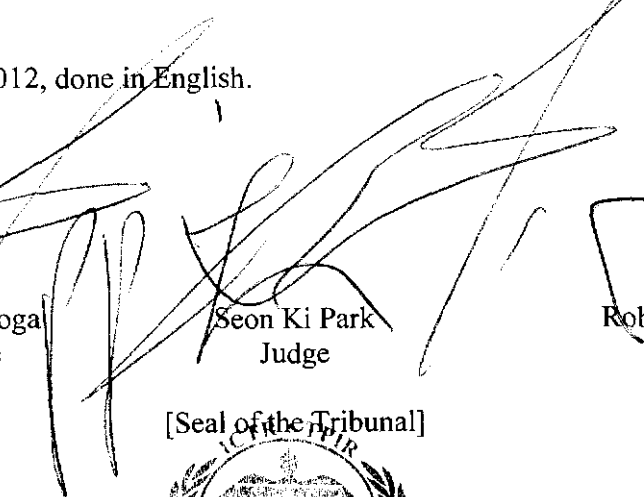
GRANTS the Prosecution's Motion and **INSTRUCTS** the Registry:


- I. to review for accuracy and re-certify the English and the French transcripts in relation to the alleged error raised by the Prosecution;
- II. to submit to the Chamber and the parties re-certified copies of the transcripts no later than 17 February 2012; and

DENIES the Defence Interim Motion in its entirety.

Arusha, 10 February 2012, done in English.


Lee Gaciga Muthoga
Presiding Judge


Seon Ki Park
Judge


Robert Fremr
Judge

[Seal of the Tribunal]
