

ICTR-98-44D-1
(30-5-2012)
(9568-9560)

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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: 30 May 2012

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTOR

v.

Callixte NZABONIMANA

Case No. ICTR-98-44D-T

**DECISION ON NZABONIMANA'S *PRO SE* MOTION TO DRAW INFERENCES IN
RELATION TO THE 245 000 RWANDAN FRANCS DISBURSED FOR
TREATMENT OF WITNESSES IN THE NZABONIMANA CASE**

Pursuant to Rules 54 and 73 of the Rules of Procedure and Evidence

Office of the Prosecution:

Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja

Defence Counsel

Vincent Courcelle-Labrousse, Lead Counsel
Philippe Larochelle, Co-Counsel

INTRODUCTION

- 1. Defence Witness Jean-Marie Vianney Mporanzi ("Mporanzi"), formerly Prosecution Witness CNAO, testified before this Tribunal on 25, 26, 27 and 31 May 2010.
- 2. During his testimony he alleged that when he was interviewed by investigators from the OTP of the Tribunal in 1998 in Gitarama *préfecture*, certain monies were disbursed to him through the intermediary of the local government by a *sous-préfet* named "Marguerite".¹ The Prosecution was granted one week to investigate the matter of disbursement of funds; however, it considered it did not have sufficient time to complete the investigations.²
- 3. On 10 August 2010, the Prosecution filed a motion seeking the admission of affidavits signed by Marguerite Mukansanga on 2 June 2010 and Alfred Kwende, the Commander and Chief of the ICTR's Investigations section pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules").³ The Trial Chamber denied the Prosecution Motion.⁴
- 4. On 21 January 2011, the Prosecution filed a motion requesting the recall of Mporanzi. The Prosecution annexed three "affidavits" to the Motion from OTP investigators Almahamoud Sidibe, Adamou Allagouma and *Sous-préfet* Marguerite Mukansanga.⁵ On 14 February 2011 the Trial Chamber granted the Prosecution Motion for Recall.⁶
- 5. On 2 March 2011, the Defence filed a motion seeking disclosure of records pertaining to disbursements paid to Mporanzi when he was interviewed by OTP investigators in 1998.⁷ On 28 March 2011, the Prosecution disclosed to the Defence several documents outlining, *inter alia*, the transfer of 245,000 Rwandan Francs between Prosecution investigator Adamou Allagouma; a *sous-préfet* of Gitarama *préfecture*; and the Finance Section of the Tribunal on 25 August 1998 ("Mporanzi Receipts").⁸

¹ T. 26 May 2010 pp. 6-13, 22, 33 (ICS) (Mporanzi).
² T. 27 May 2010 pp. 1-2 (Oral Decision).
³ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Motion for the Admission of Marguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 10 August 2010 ("Prosecution's 10 August Motion").
⁴ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Prosecutor's Motion for the Admission of Marguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 16 September 2010.
⁵ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi, 21 January 2011 ("Prosecution Motion for Recall"); Annexes A ("Sidibe Affidavit"), B ("Allagouma Affidavit") and C ("Mukasanga Affidavit").
⁶ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Prosecutor's Motion for the Recall of Defence witness Jean-Marie Vianney Mporanzi, 14 February 2011.
⁷ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Urgent Motion for Inspection and Disclosure of Evidence Pertaining to Mr. Mporanzi's Recall, 2 March 2011 ("Defence Motion for Records").
⁸ Defence Exhibit 125 (Mporanzi Receipts).

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6. On 29 March 2011, the Defence filed a motion seeking reconsideration of the Trial Chamber's 14 February 2011 Decision for the recall of Mporanzi, based on the financial documents disclosed by the Prosecution.⁹ The Prosecution conceded to the Defence Motion.¹⁰

7. On 1 April 2011, the Defence filed a motion seeking to summon OTP investigators Adamou Allagouma and Almahamoud Sidibe to testify before the Trial Chamber, for the purpose of providing further particulars of the financial arrangements exposed by the Mporanzi Receipts.¹¹ On 7 April 2011, the Trial Chamber denied the Motion, reasoning in part that the issue of any potential malfeasance by the named investigators was ancillary to the determination of the guilt or innocence of the Accused and thus would more appropriately be addressed via Rules 77 or 91 of the Rules.¹²

8. On 4 April 2011, the Chamber issued a ruling declaring the Reconsideration Motion moot on the grounds that the Prosecutor no longer considered it necessary to cross-examine the witness further and ordered the financial documents to be admitted into evidence. The Chamber found that these documents did not go to any proof of any charge in the Indictment. However, it considered that they may have a bearing on the credibility of the witness and admitted them for that particular purpose.¹³ Mporanzi did not testify on recall.

9. On 24 May 2011, the Defence filed a motion seeking disclosure of further financial records pertaining to witness compensation and the recall of eight Prosecution witnesses for the purpose of testifying as to the manner of this compensation.¹⁴

10. The Parties filed their Closing Briefs on 5 July 2011.¹⁵

⁹ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Callixte Nzabonimana's Motion for Reconsideration of the "Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi" issued on 14 February 2011 and Admission of Documents, 29 March 2011 ("Motion for Reconsideration of Recall").

¹⁰ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Callixte Nzabonimana's Motion for Reconsideration of the "Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi" issued on 14 February 2011 and Admission of Documents, 31 March 2011.

¹¹ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-préfet* Ms. Immaculée Mukamasabo, 1 April 2011 ("OTP Investigators Motion").

¹² *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-préfet* Ms. Immaculée Mukamasabo", 7 April 2011, para. 25.

¹³ T. 4 April 2011 p. 1 (Oral Decision); see Defence Exhibit 125 (Mporanzi Receipts).

¹⁴ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Defence Motion for Disclosure and Recall, 24 May 2011 ("Motion for Further Disclosure").

¹⁵ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Closing Brief, 5 July 2010 ("Prosecution Closing Brief"); *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Final Brief, 5 July 2010 ("Defence Closing Brief").

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11. On 13 July 2011, the Trial Chamber ordered the Prosecution to notify the Chamber, within one working day, whether it had addressed the Finance Department of the Tribunal with respect to the records sought by the Defence in its Motion for Further Disclosure and if so, to provide the Chamber with copies of all correspondence between the Prosecution and Finance Department regarding payments to Prosecution witnesses in the present case.¹⁶ The Prosecution complied on 15 July 2011 attaching several emails demonstrating that the Prosecution had conducted an investigation into the matter.¹⁷

12. On 23 August 2011, the Trial Chamber granted in part the Defence Motion for Further Disclosure and directed the Registry to permit the Defence to "inspect any books or documents relating to the 245,000 Rwandese Francs disbursed by the Tribunal on 25 August 1998 in relation to the treatment of Prosecution witnesses in the instant proceedings that may be in the custody or control of the Finance Section of the Tribunal."¹⁸

13. On 12 October 2011, the Defence filed a motion seeking the institution of proceedings against Messrs. Allagouma, Sidibe and Kwende for providing false testimony before this Chamber pursuant to Rule 91, as well as a renewal of its prior request of 24 May 2011 that Mr. Moumouni be subject to proceedings under Rule 77 for contempt of the Tribunal.¹⁹ On 18 October 2011, the Prosecution filed its Response to the Motion for Contempt Proceedings.²⁰

14. On 20 and 21 October 2011, the Parties presented their Closing Arguments before the Trial Chamber. On 21 October 2011, the Trial Chamber ordered the proceedings adjourned *sine die*.²¹

15. On 25 November 2011, the Trial Chamber denied the 12 October 2011 Motion for Contempt Proceedings.²² On 12 December 2011, the Defence filed a Notice to Appeal the

¹⁶ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Order to the Prosecution to Provide Additional Information, 13 July 2011.

¹⁷ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Compliance with the Trial Chamber's Order to the Prosecution to Provide Additional Information and Annex A, 15 July 2011.

¹⁸ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for Disclosure and Recall, 23 August 2011.

¹⁹ *Prosecutor v. Nzabonimana*, ICTR-98-44D-T, Nzabonimana's Motion against OTP Investigators Alfred Kwende, Adamou Allagouma, Almahamoud Sidibe and Djibo Moumouni, 12 October 2011 ("Motion for Contempt Proceedings").

²⁰ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion Against OTP Investigators Alfred Kwende, Adamou Allagouma, Almahamoud Sidibe and Djibo Moumouni, 18 October 2011 ("Response to Motion for Contempt Proceedings").

²¹ T. 21 October 2011 p. 25 (Oral Order).

²² *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for Proceedings Against OTP Investigators, 25 November 2011.

Trial Chamber's 25 November 2011 Decision.²³ On 27 April 2012, the Appeals Chamber denied Nzabonimana's appeal against the Trial Chamber's Decision of 25 November 2011.²⁴

16. On 30 April 2012 Nzabonimana filed the current motion, *pro se* ("Pro Se Motion").²⁵

17. On 7 May 2012, the Prosecution filed its Response ("Response").²⁶

18. Nzabonimana did not reply to the Prosecution Response.

SUBMISSIONS OF THE PARTIES

Pro Se Motion

19. Nzabonimana requests the Trial Chamber to draw a negative inference as to the credibility of all Prosecution witnesses from Gitarama and a positive inference in favour of Defence Witness Mporanzi.²⁷

20. Nzabonimana submits that he filed the Motion *pro se*, because his Defence team was denied resources by the Registry, in violation of his fair trial rights.²⁸

21. He submits that the Trial Chamber has acknowledged that this matter concerns the integrity of the Prosecution".²⁹ He further submits that the Defence was unable to ascertain how the 245,000 Rwandan Francs were used and affirms that the records to which it had access on 12 September 2011, were "essentially the same" as the Mporanzi Receipts.³⁰

22. Nzabonimana submits that there is evidence of a "cover up". The Receipts show that money was paid from the Tribunal to Rwandan authorities for the "treatment" of Gitarama witnesses in the *Nzabonimana* case, the Prosecution has denied such payments and OTP investigators submitted as false "affidavits" as support.³¹

²³ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Notice to Appeal the Trial Chamber's Decision on the Defence Motion for Proceedings Against OTP Investigators, Rendered on 25 November 2011, 12 December 2011.

²⁴ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-AR91, Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators, 27 April 2012.

²⁵ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's *Pro Se* Motion to Draw Inferences in Relation to the 245 000 Rwandan Francs Disbursed for Treatment of Witnesses in the Nzabonimana Case, 30 April 2012.

²⁶ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion to Draw Inferences, 7 May 2012.

²⁷ Motion, paras. 1, 41, 44, 49-50,

²⁸ Motion, para. 2.

²⁹ Motion, para. 4, referring to T. 27 May 2010 pp. 1-2 (Oral Decision).

³⁰ Motion, para. 42 referring to Defence Exhibit 125 (Mporanzi Receipts).

³¹ Motion, para. 43.

23. Nzabonimana further argues that the Prosecution violated its Rule 68 obligations by failing to investigate how the money was used in the "treatment" of witnesses, as the credibility of all Prosecution witnesses could potentially be affected. Nzabonimana suffered prejudice as a result of this lack of diligence, as his right to the truth has been denied.³²

24. Nzabonimana submits that the *amicus curiae* report filed on 1 April 2010 concluded that protective measures for Defence witnesses were inadequate and recommended measures necessary to enhance witness protection.³³ In addition to the *amicus'* findings, Mporanzi's testimony and the Mporanzi Receipts make a *prima facie* case that the OTP lacked integrity in dealing with Gitarama witnesses. Consequently, the testimony of these witnesses was not credible.³⁴

25. Nzabonimana argues that the Mporanzi Receipts corroborate Mporanzi's testimony and show that he was not lying.³⁵ Nzabonimana argues that the positive inference should extend to all aspects of Mporanzi's testimony.³⁶

Prosecution Response

26. The Prosecution urges the Chamber to deny the *Pro Se* Motion. It submits that it is an attempt at filing an "impermissible addendum to his final trial brief", and that Nzabonimana has not requested leave of the Chamber to file an addendum to his Closing Brief.³⁷ Furthermore, the Defence knew about the documents for almost six months, and had addressed the issue in both its Closing Brief and Closing Arguments.³⁸

27. The Prosecution also asserts that the evidence does not establish that witnesses were bribed.³⁹ The Prosecution submits that there is no indication of an agreement to pay witnesses through Rwandan authorities and that Mporanzi testified that after the first incident, he was paid directly by the investigators.⁴⁰ The Trial Chamber also previously decided that there was insufficient evidence to recall witnesses with regards to such allegations.⁴¹

³² Motion, paras. 44-45.

³³ Motion, paras. 46-48.

³⁴ Motion, para. 49.

³⁵ Motion, para. 50.

³⁶ Motion, para. 51.

³⁷ Response, paras. 1, 23-24.

³⁸ Response, para. 24.

³⁹ Response, para. 1.

⁴⁰ Response, para. 28.

⁴¹ Response, para. 29 referring to *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for Disclosure and Recall, 23 August 2011, para. 23.

28. The Prosecution argues that the Mporanzi Receipts provide no basis to conclude that Mporanzi is credible, but are “simply one factor” in assessing his general credibility.⁴² Furthermore, it submits that the Mporanzi Receipts show that the funds were received by *Sous-préfet* Immaculee Mukamasabo and not Marguerite Mukansanga as was specified by Mporanzi.⁴³

DELIBERATIONS

29. As a preliminary issue, the Chamber observes that in its previous submissions to this Chamber, the Registrar noted that Lead Counsel is assigned to represent the Accused during all stages of the procedure, including appeals. Co-Counsel is assigned until the delivery of the judgement. Defence support staff, such as legal assistants and investigators, is appointed on the basis of contracts of set duration which are renewable upon request to the Registry by Lead Counsel.⁴⁴

30. The Chamber recalls its previous findings that the Defence had adequate resources at its disposal at the time the Chamber rendered its 30 April 2012 Consolidated Decision in relation to the Prosecution disclosures of Rule 68 material.⁴⁵ In this regard, the Chamber also notes that the Defence request to the Registry for additional resources, dated 6 April 2012, and submitted in response to the Chamber's 4 April 2012 Order to the Parties, relates to additional remuneration for the entire Defence team, including legal assistants and investigators, in order that it be able to review the CD-ROM disclosures.⁴⁶ The Defence has failed to demonstrate that it requested additional resources for the issue at hand.

31. The Chamber further recalls that Article 4(1) of the Code of Professional Conduct of Defence Counsel (“Code of Conduct”) states that “Counsel must advise and represent their client until the client duly terminates Counsel's position, or Counsel is otherwise withdrawn with the consent of the Tribunal.” Furthermore, Articles 6 and 9(1) of the Code of Conduct

⁴² Response, para. 31.

⁴³ Response, para. 32.

⁴⁴ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Registrar's Further Submissions on Resources Available to the Defence in 2012, 3 April 2012.

⁴⁵ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Consolidated Decision on Defence Motion for Appropriate Relief in Light of Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, Defence Motion in Light of the Trial Chamber's *Proprio Motu* Order of 15 March 2012, and Defence Motion Pursuant to the Trial Chamber's Order of 4 April 2012, 30 April 2012.

⁴⁶ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Urgent Motion for Reconsideration or Certification of the “Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012”, 4 April 2012, 13 April 2012 (correspondence between Lead Counsel for the Defence and the Registry attached); *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Order to the Parties Concerning Submissions on Potentially Exculpatory Material Contained on the CD-ROM Disclosed by the Prosecution on 17 February 2012, 4 April 2012.

state that "Counsel must represent a client diligently in order to protect the client's best interests. Unless the representation is terminated, Counsel must carry through to conclusion all matters undertaken for a client within the scope of his legal representation" and "Counsel owes a duty of loyalty to his or her client. Counsel must at all times act in the best interests of the client and must put those interests before their own interests or those of any other person."⁴⁷ The Chamber reminds Defence Counsel of its continuing obligation to represent the Accused in accord with these standards. The Defence remains seized of this case and there is no reason for Nzabonimana to have filed this Motion *pro se*.

Applicable Law

32. Rule 73(A) of the Rules provide that:

Subject to Rule 72, either party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Trial Chamber, or a Judge designated by the Chamber from among its members, may rule on such motions based solely on the briefs of the parties, unless it is decided to hear the motion in open Court.⁴⁸

33. Rule 54 of the Rules states that:

At the request of either party of *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.⁴⁹

Drawing an inference

34. The Trial Chamber notes that the issue of 245,000 Rwandan Francs has been extensively litigated before this Chamber and the Appeals Chamber. The Trial Chamber granted the Prosecution request to investigate the matter of disbursement of funds to Prosecution witnesses, observing that the allegation made was a crucial issue.⁵⁰ However, later the Chamber denied an application by the Prosecution to admit into evidence, affidavits pertaining to the testimony of Mporanzi and allowed the Prosecution to recall him for further cross-examination after the completion of the Defence case.⁵¹

⁴⁷ Articles 4, 6 and 9(1) of the Code of Conduct.

⁴⁸ Rule 73(A) of the Rules.

⁴⁹ Rule 54 of the Rules.

⁵⁰ T. 27 May 2010 pp. 1-2 (Oral Ruling).

⁵¹ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Prosecutor's Motion for the Admission of Marguerite Mukansanga and Alfred Kwende's Affidavits Pertaining to the Testimony of Jean Vianney Mporanzi, 16 September 2010; *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Prosecutor's Motion for the Recall of Defence Witness Jean-Marie Vianney Mporanzi, 14 February 2011.

35. Mporanzi was due to testify on 1 April 2011,⁵² however, the Prosecution decided not to pursue the cross-examination of Mporanzi. Furthermore, the Chamber admitted the Mporanzi Receipts into evidence and found that these documents did not go to any proof of any charge in the Indictment. However, it considered that they may have a bearing on the credibility of the witness and admitted them for that particular purpose.⁵³ In its 7 April 2011 Decision concerning the Defence Motion to summon OTP investigators over the same issue, the Chamber found that the Defence had failed to establish that the Prosecution bribed its witnesses.⁵⁴ The Chamber also denied the Defence Motion to initiate proceedings against OTP investigators for allegedly providing false testimony, as was subsequently confirmed by the Appeals Chamber.⁵⁵

36. Given the foregoing, the Chamber observes that it has already extensively addressed the issue raised by the Accused in this Pro Se Motion, and therefore denies the Accused's request to draw a negative or positive inference as to Prosecution witnesses from Gitarama and Mporanzi, respectively. Moreover, the Trial Chamber remains cognizant of its duty to evaluate all of the evidence presented and to make inferences where necessary.

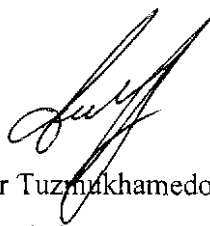
FOR THESE REASONS, THE TRIAL CHAMBER

DENIES the Pro Se Motion in its entirety.

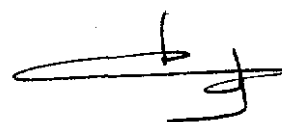
Arusha, 30 May 2012, done in English.



Solomy Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge



Mparany Rajohnson
Judge



⁵² T. 29 March 2011 pp. 1-9 (Oral Ruling).

⁵³ T. 4 April 2011 p. 1 (Oral Decision); see Defence Exhibit 125 (Mporanzi Receipts).

⁵⁴ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on "Callixte Nzabonimana's Motion for Summon of OTP Investigators Adamou Allagouma and Almahamoud Sidibe, *Sous-Préfet* Ms Immaculée Mukamsabo", 7 April 2011, para. 22.

⁵⁵ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Decision on Defence Motion for Proceedings Against OTP Investigators, 25 November 2011; *Nzabonimana v. Prosecutor*, Case No. ICTR-98-44D-AR91, Decision on Callixte Nzabonimana's Appeal Against the Trial Chamber's Decision on Motion for Rule 91 Proceedings Against Prosecution Investigators (AC), 27 April 2012.