

ICTR-01-73-A  
16-7-2009  
(359/A - 353/A)

359/A  
Zump

Statement of Adjudicated facts re Gratien Kabiligi

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

JUDGEMENT

18 December 2008

No appeal has been filed

Judgment  
18 Dec 2008  
Gratien Kabiligi

Alibi of Gratien Kabiligi

- Established for 28 March- 8 April 1994 that Mr Kabiligi was in Egypt (paragraph 1976)
- Absence of proof beyond reasonable doubt as to his presence in Rwanda from 9-13 April 2009 (paragraph 1980).
- Absence of proof beyond reasonable doubt of return from Nairobi before April 23, 1994

*Excerpt from Judgment*

*Deliberations*

1975. Kabiligi's alibi for the period of 28 March to 23 April 1994 can be divided into three distinct parts. The first part includes the period that he was in Cairo, Egypt from 28 March until his departure for Saudi Arabia on 8 April. The second part concerns the period from 9 to 13 April where the Kabiligi Defence has provided no indication as to Kabiligi's whereabouts, except to intimate that he remained outside of Rwanda. The third part relates to the period from 14 to 23 April when Kabiligi was allegedly in Nairobi, Kenya.

*(i) 28 March to 8 April 1994*

1976. With respect to the first part of the alibi, the Prosecution accepts that Kabiligi was in Cairo from 28 March until 8 April 1994 when he departed Egypt on a flight to Saudi Arabia.<sup>2161</sup> This is also confirmed by documentary evidence from the Egyptian government as well as the military training academy Kabiligi attended there.<sup>2162</sup> The Chamber notes that the testimony of Kanyarushoki suggests that Kabiligi might have been in Cairo as late as 10 April. However, Kanyarushoki acknowledged that he was not certain about the dates in particular when confronted with documentary evidence from the Egyptian government confirming Kabiligi's date of departure. In view of the evidence, the Chamber considers that Kabiligi has established the first part of his alibi.

*(ii) 9 to 13 April 1994*

1977. The Kabiligi Defence provided no indication of Kabiligi's whereabouts between 9 and 13 April 1994 in either its notice of alibi or its Closing Brief. Witnesses LAX-23 and DELTA, who attested to Kabiligi's arrival in Nairobi on 14 April, simply asserted that he was coming from Cairo, only implying that he had not yet returned to Rwanda. However, Witness LAX-23 clearly stated that he did not know where Kabiligi was in the days before arriving in Nairobi. Taking into account the time needed for return travel, the Prosecution also considers it "reasonable to conclude that Kabiligi first returned to Rwanda on or about [9 or 10 April]"<sup>2163</sup> The Chamber accepts that Kabiligi has a reasonable explanation of his activities until this time. However, the Defence did not provide one for his time between 10 and 13 April.

1978. This said, the Prosecution evidence of Kabiligi's activities in Rwanda during this period is limited. It refers primarily to the evidence of Prosecution Witnesses CE and Ruggiu who attested to Kabiligi's arrival at Camp Kigali after the death of President Habyarimana<sup>2164</sup>. Witness CE, a soldier, recalled seeing Kabiligi and hearing soldiers cheer his arrival at Camp Kigali in a military jeep "a few days" after the death of the President.<sup>2165</sup> Ruggiu, a journalist with the RTLM, recalled seeing Kabiligi arrive between 14 and 17 April by helicopter near the officers mess at Camp Kigali.<sup>2166</sup> Although the witnesses provided different dates for Kabiligi's arrival, the Prosecution contends in its Closing Brief that these two witnesses "materially" corroborate one other.<sup>2167</sup> There is, however, no convincing way to explain the significant discrepancy

between their testimonies about Kabiligi's arrival, and it appears that they are referring to separate incidents at different times.

1979. The Prosecution also submits that, given Kabiligi's senior position in the G-3 office of the army staff, it is unreasonable to assume that he would delay his return to Rwanda by several weeks.<sup>2168</sup> In light of Kabiligi's authority over the aviation squadron as well as the existence of helicopter flights as early 7 April, the Prosecution argues that Kabiligi could have easily facilitated his return to Rwanda.<sup>2169</sup> It suggests that Kabiligi may have returned multiple times, implicitly arguing that Witness CE saw him during the second part of the alibi and that Ruggiu was referring to a later arrival during the third part of the alibi.<sup>2170</sup> These submission are more consistent with the witnesses' varying accounts of Kabiligi's arrival.

1980. The Prosecution did not present any other evidence of Kabiligi's presence in Rwanda between 9 and 13 April, which is surprising given the resumed hostilities and his role as G-3 on the army's general staff. Furthermore, the Chamber heard extensive evidence from a number of soldiers stationed at Camp Kigali in connection with the killing of the Belgian peacekeepers (III.3.4).<sup>2171</sup> Indeed, the sheer contrast between the limited evidence related to Kabiligi's whereabouts during this period – only Witness CE's testimony – and the overwhelming evidence of the activities of Bagosora, Ntabakuze and Nsengiyumva, discussed elsewhere in this judgement, is significant.<sup>2172</sup> In the Chamber's view, the exceedingly limited nature of the evidence of Kabiligi's presence in Rwanda between 9 and 13 April is important, in particular bearing in mind his rank and role in the army. It suggests he may not have been in Rwanda. The Chamber therefore has some doubt about Witness CE's evidence placing Kabiligi in Rwanda. And even assuming that Witness CE's evidence were true, the Chamber still has no evidence of any of Kabiligi's activities between 9 and 13 April.

*(iii) 14 to 23 April 1994*

1981. Turning to the third part of Kabiligi's alibi from 14 until 23 April 1994, the Prosecution accepts that Kabiligi may have briefly travelled to Nairobi, Kenya.<sup>2173</sup> In this respect, the Chamber finds that the evidence reliably shows that Kabiligi arrived in Nairobi on 14 April and signed a weapons contract on 15 April with Oriental Machineries, Inc. This follows from the testimonies of Witnesses LAX-23 and DELTA, which are corroborated by documentary

evidence, referring to Kabiligi signing the contract of 15 April 1994.<sup>2174</sup> It is less clear how long Kabiligi remained in Kenya.

1982. The Kabiligi Defence has explained that he remained there until 23 April, arranging the delivery date for the contracted munitions as well as his chartered transport back to Rwanda. This is supported mainly by Witnesses LAX-23 and DELTA, who regularly saw him at the embassy and who took him to the airport. Witness LAX-23's agenda,<sup>2175</sup> reflecting Kabiligi's date of departure, provides corroboration, as do Nsengiyumva and Witnesses STAR-1 and RO-6, who place Kabiligi's arrival in Rwanda on or around 23 April. Witnesses STAR-1 and RO-6 gave only approximate dates for his arrival around this time.

1983. To counter this evidence, the Prosecution appears to rely on Witnesses Ruggiu, DY and XXH. As noted above, Ruggiu allegedly saw Kabiligi arrive at Camp Kigali at some point between 14 and 17 April. Witness DY testified that he was assigned to escort Kabiligi on 20 April (III.4.1.8-9). Witness XXH allegedly saw Kabiligi at a meeting with President Sindikubwabo in Cyangugu prefecture on 23 April (III.4.1.6). The Chamber considers the overall lack of evidence concerning Kabiligi's activities in Rwanda between 14 and 23 April to militate in favour of the reasonableness of the third part of his alibi.

1984. The Chamber has previously expressed concern with the credibility of Ruggiu and thus views his evidence with caution. In this case, there are some discrepancies with respect to when he stayed at Camp Kigali. According to his testimony, he was there from 14 to 16 April. However, in his plea agreement, he affirmed that he was at Camp Kigali significantly earlier, between 12 and 14 April.<sup>2176</sup> Furthermore, Witness CE, whom the Prosecution relies on to corroborate Ruggiu's presence at Camp Kigali, testified that he did not see Ruggiu there until after the bombing of RTLM, around 17 to 19 April.<sup>2177</sup> If true, this would then place Ruggiu's sighting of Kabiligi more in line with the Kabiligi Defence's version of when the Accused returned.<sup>2178</sup> Witness CE's account does not exclude that Ruggiu was at the camp earlier, but given that Ruggiu was Belgian it is likely that his presence would have been noticed. These differences reflect that there is a lack of clarity as to when Ruggiu was at the camp. His evidence is uncorroborated, and the Chamber declines to rely on his account of Kabiligi's return.

1985. The Chamber has previously expressed concern with the credibility of uncorroborated testimony of Witness DY (III.4.1.8-9; III.4.4.2). Concerning the evidence of Witness XXH,

which places Kabiligi in Cyangugu on 23 April (III.4.1.6), the Chamber notes that this evidence does not strictly refute Kabiligi's alibi since his Defence claims that he returned to Rwanda on 23 April. Furthermore, André Ntagerura, Witness RX-3 and Emmanuel Bagambiki disputed that there was a meeting in Cyangugu involving Kabiligi and the President at this time. According to their testimony, they attended a meeting involving the President around 17 May, and Kabiligi was not present. Considering this evidence, the Chamber declines to accept Witness XXH's evidence without further corroboration.

1986. The Chamber finds that the Defence has provided a reasonable explanation of Kabiligi's whereabouts during the third part of his alibi from 14 to 23 April 1994, supported by first-hand corroborated evidence. The Chamber has taken into account the Prosecution's arguments concerning the credibility of these alibi witnesses, based primarily on their status as alleged co-conspirators, their connections with the interim-government or possible efforts after 1994 to overthrow the current government in Rwanda.<sup>2179</sup> However, the Prosecution still has not proven beyond reasonable doubt that Kabiligi returned from Nairobi before 23 April 1994 when its evidence is weighed individually and together with the alibi evidence.

354/A

exculpatory information re Gratiem Kabiligi and witness ATO

Sujet : exculpatory information re Gratiem Kabiligi and witness ATO

De : John Philpot <jphilpot@bpjbp.qc.ca>

Date : Mon, 28 May 2007 15:25:52 -0400

Pour : Wallace Kapaya <kapaya@un.org>

Copie à : Peter Zaduk <pzaduk@allstream.net>, paul skolnik <paulskolnik@yahoo.ca>

May 28, 2007

Dear Colleague,

As you know, witness ATO stated under cross examination that he saw Gratiem Kabiligi in Kigali on 7 April 1994. He also described seeing him on 12 and/or 13 April.

You are aware as was stated in cross-examination that Mr Kabiligi provided an alibi defense and that evidence was produced that in effect Mr Kabiligi was out of Rwanda from late March until about April 20, 1994.

In the amended indictment, the Prosecutor states that Mr Kabiligi was out of Rwanda on April 6 and that on April 7 or 8 he was ordered back.

You also have Prosecution exhibit ICTR-98-41-T F232C copie attached which confirms that Mr Kabiligi was in Egypt on April 7, 1994.

Please send us:

All evidence under your control including filed exhibits which states that Mr Kabiligi was not in Rwanda on April 7.

All evidence under your control including filed exhibits that Mr Kabiligi was not in Rwanda in the period April 10-13 or thereabouts.

If there is confidential information, please designate the witnesses so I can file to have obtain the materials, eventually to be filed either by witnesses or by Rule 92 bis.

I hope we can work this out in an amical manner.

Thank you.

Yours truly,

John Philpot

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353/A

<b>PAUL SKOLNIK</b> , B.COMM, B.C.L. AVOCAT-ATTORNEY AT LAW Email: <a href="mailto:paulskolnik@yahoo.ca">paulskolnik@yahoo.ca</a>	TEL: 514-842-6900 FAX: 514-842-6905
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9 June 2009

By Email Attachment

Me John R. Philpot-Attorney  
1259 Rue Berri suite #1000  
Montréal Qc.  
H2L 4C7

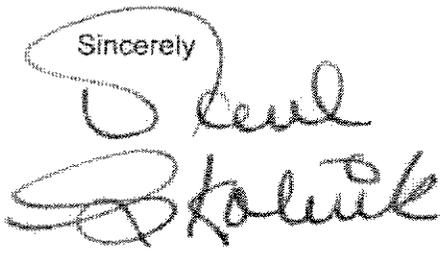
Dear Colleague :

This letter attests to the following:

That you made a request through me that Brigadier General Gratien Kabiligi testify on behalf of your client Protais Zigiranyirazo.

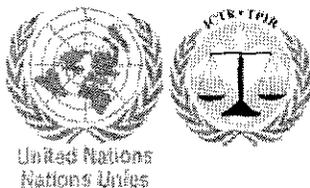
After consultation with General Kabiligi, I informed you, that since General Kabiligi had not testified in his own trial [Military 1] at the ICTR, he would not testify for your client or any one else who so requested.

Sincerely



PAUL SKOLNIK  
Lead Counsel of General Kabiligi

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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afandé
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<b>Case Name:</b>	The Prosecutor vs. Protais Zigiranyirazo		<b>Case Number:</b> ICTR-2001-73-T	
<b>Dates:</b>	Transmitted: 16 07 09		Document's date: _____	
<b>No. of Pages:</b>	see exhibits	<b>Original Language:</b>	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
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Reference material is provided in annex to facilitate translation.

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