



ICTR-00-55B-A

16-11-2011
(1186bis/A - 1182bis/A)

1186bis/A

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"Notre attitude détermine notre altitude"

"A Great Lawyer knows the Judge. A Good Lawyer knows the law"

Douala, 10 October 2011

APPEALS CHAMBER

ENGLISH

Original: FRENCH

Before: Judge Mehmet Güney, presiding
Judge Fausto Pocar
Judge Andréia Vaz
Judge Theodor Meron
Judge Carmel Agius

Registrar: Adama Dieng

THE PROSECUTOR

v.

ILDEPHONSE HATEGEKIMANA

Case No. ICTR-00-55B-A

JUDICIAL RECORDS ARCHIVES
UNICTR
2011 NOV 16 AM 11:16

Ildephonse Hategekimana's Reply to Prosecutor's Response to Ildephonse Hategekimana's Motion for Admission of Additional Evidence under Rule 115 of the Rules of Procedure and Evidence, filed on 30 September 2011

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A11-0250 (E)

Translation certified by LSS, ICTR

MAY IT PLEASE THE HONOURABLE JUDGES OF THE APPEALS CHAMBER,

1. On 29 August 2011, Lieutenant Ildephonse Hategekimana filed a motion titled "Ildephonse Hategekimana's Motion to Present Additional Evidence, filed under Rule 115 of the Rules of Procedure and Evidence (RPE) and Paragraph 7 of the Practice Direction on Formal Requirements for Appeals from Judgement".
2. On 30 September 2011, the Prosecutor filed the "Prosecutor's Response to Ildephonse Hategekimana's Motion for Admission of Additional Evidence under Rule 115 of the Rules of Procedure and Evidence" wherein the Respondent prays the Appeals Chamber to dismiss the Appellant's request on the ground that it does not meet the requirements of Rule 115 of the Rules of Procedure and Evidence.
3. The Appellant hereby seeks to demonstrate that the Prosecutor's argument is without merit.

I. Admissibility of Ildephonse Hategekimana's Motion

4. The Respondent argues that the Appellant's motion was filed in contravention of the provisions of Rule 115(A) because it was filed more than 30 days after the filing of the Brief in Reply.
5. But, contrary to the Respondent's claims, the motion was filed within the prescribed time limit on account of the fact that where the last day falls upon a Sunday or a non-working day, it is considered as falling on the first working day thereafter: which is indeed the case in this instance.
6. Furthermore, Rule 115(A) does not provide for any sanction in the case of late filing. It is left entirely to the discretion of the Appeals Chamber, notably under Article 19 [sic] of the *Practice Direction on Formal Requirements for Appeals from Judgement*, to recognize as validly done any act done after the expiration of the prescribed time limit.
7. It is precisely on the basis of this Rule that the Appeals Chamber, in its *Decision on Ildephonse Hategekimana's Motion to Order the Prosecution to Disclose Documents*, rendered on 26 August 2011, considered the Prosecutor's response that was filed after the expiration of the prescribed time limit without the Prosecutor having to provide any explanation whatsoever for the late filing.¹
8. The Prosecutor's attitude is all the more surprising because his response, dated 30 September 2011, was filed out of time, that is, more than ten days after the filing of the Appellant's motion.
9. The Appellant submits that the Appeals Chamber having invoked the interests of justice to show mercy to the Prosecutor in that instance, the Chamber should similarly admit the present reply by the Appellant, which is filed belatedly, precisely because of the Prosecutor's tardy response.

¹ The Appeals Chamber indeed ruled that: "CONSIDERING that the Response was filed after the expiration of the prescribed time-limit ... FINDING, nonetheless, that it is in the interests of justice to consider the Response".

II. Merits

10. In his response of 30 September 2011, the Prosecutor differentiates between documents in the possession of the Appellant and those not in his possession.

Documents not yet in the possession of the Appellant

11. The Prosecutor argues that the Appellant is not in possession of the following documents: *pro-justitia* statements of Michel Murigande; *pro-justitia* statements of Sadiki Sezirahiga's wife; excerpt from Judgement No. 500-73-002500-052 of 22 May 2009, 2009 QCCS 2201 in *Her Majesty the Queen v. Munyaneza Desiré*, containing the testimony of Witness QCL who testified under the pseudonym RCW-2; judgement of the Brussels District Court delivered on 8 June 2001 in the trial of *Ntezimana Vincent et al.*, an extract from the transcripts of *Prosecutor v. Vincent Ntezimana et al.*; case before the Brussels District Court in 2000, including the testimony of Witness 134 on the attack on *Maison Généralice*, which hosted sisters from Bénébikira Convent, and the attack at Karenzi's house.
12. The Respondent submits that by failing to attach the said documents to his motion, the Appellant has not satisfied the requirements of Rule 115(A).
13. However, the Prosecutor notes in paragraph 11 of his response of 30 September 2011 that the Appellant sought the reconsideration of the Appeals Chamber's decision denying his request to order Belgium and Canada to facilitate his access to the prior statements of certain Prosecution witnesses who testified before the domestic courts in Belgium (2001) and Canada (2007).
14. The Prosecutor fails to demonstrate how the Appellant's motion for reconsideration is improper and unwarranted in the instant case.
15. Clearly, the Respondent's claim that the Appellant did not meet Rule 115 requirements because he was not in possession of the said material is premature, inasmuch as access to the said documents remains possible.
16. Regarding the *pro-justitia* statements of Murigande and of Sadiki's wife, the Prosecutor engages in legal wrangling, without clearly stating that he is not in possession of the documents in question, copies of which were disclosed [*sic*] together with the Motion to Present Additional Evidence.

Documents in possession of the Appellant

17. Contrary to the Prosecutor's allegation, the Appellant submits that the documents in his possession which he seeks to tender into evidence are consistent with the jurisprudence and Rule 115(A).
18. In paragraph 20 of his response, the Prosecutor reiterates the legal provision cited by the Appellant in paragraph 26 [*sic*] of his motion of 29 August 2011: "*Where evidence is relevant and credible, the Appeals Chamber may allow additional evidence on*

appeal, even where it was available at trial or could have been discovered through the exercise of due diligence, if the moving party establishes that its exclusion would amount to a miscarriage of justice. To fall within this exception, however, the appellant must show that the tendered material would have had an impact on the verdict.”²

19. It is on the basis of this exception, which highlights the notion of miscarriage of justice and the impact that the material would have had on the verdict, that the Appellant filed his motion. Indeed, the Prosecutor, who is fully cognizant of this fact, clumsily tries to deny the impact the said documents would have had on the conviction entered by the Chamber.

Impact of the judgement of Théogène Mukwiye, alias Ruhango, and other documents on the guilty verdict

20. The Prosecutor alleges in paragraph 28 of his response that the judgement of the Butare Court of First Instance, which is sought to be admitted, is irrelevant to the massacre sites described by the Appellant in his motion because the role played by the Appellant in the attacks was not before the Butare Court.
21. The Prosecutor adds that the fact that the judgement of the Butare Court of First Instance does not mention the Appellant’s name does not render the judgement relevant. He cites jurisprudence to support his argument.
22. However, the Prosecutor fails to demonstrate how the facts in the present case are similar to those mentioned in the cited jurisprudence.
23. Furthermore, the Prosecutor tries to sow confusion because the issue at hand is not about the Appellant’s activities or his alleged role in the attacks, but rather about his presence among the perpetrators of the killings. It is therefore a matter of identity.
24. Worse still, the Prosecutor conveniently fails to point out that in the said Butare Court judgement, some perpetrators who were named had not appeared before the ICTR.
25. It therefore follows that it is not the presence of the Appellant or his role in the Butare trial that determine the relevance of the judgement of the Butare Court of First Instance, the credibility of which is not challenged by the Prosecutor.
26. Regarding the massacre sites, the Prosecutor lied blatantly in paragraph 32 of his response in claiming that the Chamber heard evidence about the presence of the Appellant during the Ngoma Parish attack through the testimonies of Defence Witnesses ZML, MZA and in the Defence Closing Brief.
27. Regarding the killing of Nura Sezirahiga, the Appellant reasserts that contrary to the Prosecutor’s allegation, the attack on the home of Sadiki Sezirahiga and those who raped his daughter, Nura Sezirahiga, are adequately addressed in the Butare Court’s

² See *Aloys Simba v. The Prosecutor*, “Decision on Appellant Aloys Simba’s Request to Present Additional Evidence”, 21 May 2007. See also, *The Prosecutor v. Gaspard Kanyarukiga*, “Decision on Request to Admit Additional Evidence of 1 August 2008”, 1 September 2008.

judgement. The Appellant appropriately refers to his motion of 29 August 2011. It is worth noting that beyond the mere omission of the Appellant's name, there is a discernible contradiction in the evidence of Witness Sadiki Sezirahiga, who testified before the Butare Court of First Instance and before ICTR.

28. Trial Chamber II of the ICTR would not have convicted the Appellant for the rape of Nura Sezirahiga if he had been in possession of the judgement of the Butare Court of First Instance.
29. With respect to the murder of Rugomboka, the Appellant contends that contrary to the Prosecutor's allegation, the issue is not about the role of participants in the attack, but their presence and identity. That is why the Defence reasserts that the Appellant would not have been convicted for this crime if the Judges of Trial Chamber II had been aware of Witness QDC's testimony before the Butare Court of First Instance.
30. The same applies to the murder committed at Mujawayezu's house.
31. As to all the other arguments, the Appellant stands by his motion of 30 August 2011.

FOR ALL THESE REASONS, INCLUDING ADDITIONAL OR SUBSEQUENT SUBMISSIONS, MAY IT PLEASE THE APPEALS CHAMBER:

To admit the present reply and grant the Appellant's Motion to Present Additional Evidence, filed on 29 August 2011, in its entirety.

The Appellant reserves the right to make further submissions.

And justice shall be done

[Signed]

Jean de Dieu Momo
Lead Counsel



**COURT MANAGEMENT
ADMINISTRATION DES CHAMBRES**

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**APPEALS ON MERITS - PROOF OF SERVICE - ARUSHA
PREUVE DE NOTIFICATION – CHAMBRE D'APPEL - ARUSHA**

Date: 16 November, 2011	Case Name / affaire: ILDEPHONSE HATEGEKIMANA	
	Case N° / n° de l'affaire: ICTR – 00 – 55B - A	
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	ACCUSED / DEFENSE <input checked="" type="checkbox"/> Accused / <i>Accusé</i> I. HATEGEKIMANA <small>see / voir * CMS4</small> <input checked="" type="checkbox"/> Lead Counsel / <i>Conseil Principal:</i> JEAN DE DIEU MOMO <input type="checkbox"/> In Arusha / à Arusha: <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax: <input checked="" type="checkbox"/> Co-Counsel / <i>Conseil Adjoint:</i> RAUL DJAMFA <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax:	
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ILDEPHONSE HATEGEKIMANA'S REPLY TO PROSECUTOR'S RESPONSE TO ILDEPHONSE HATEGEKIMANA'S MOTION FOR ADMISSION OF ADDITIONAL EVIDENCE UNDER RULE 115 OF THE RULES OF PROCEDURE AND EVIDENCE, FILED ON 30 SEPTEMBER 2011	16/11/2011	1186BIS/A – 1182BIS/A

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