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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

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ICTR-02-78-AR73
19th February 2010
{109/H – 100/H}

## IN THE APPEALS CHAMBER

**Before:** Judge Patrick Robinson, Presiding
Judge Mehmet Güney
Judge Liu Daqun
Judge Andrésia Vaz
Judge Carmel Agius

ICTR Appeals Chamber
Date: 19/Feb/2010
Action: A Dumas
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**Registrar:** Mr. Adama Dieng

**Decision of:** 19 February 2010

ICTR CENTRAL REGISTRY
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ACTION: APPEAL/CMS
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**GASPARD KANYARUKIGA**

**v.**

**THE PROSECUTOR**

*Case No. ICTR-02-78-AR73*

# DECISION ON KANYARUKIGA'S INTERLOCUTORY APPEAL OF DECISION ON DISCLOSURE AND RETURN OF EXCULPATORY DOCUMENTS

**Counsel for the Appellant:**

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Mr. Marc Nerenberg

**Office of the Prosecutor:**

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Ms. Holo Makwaia
Ms. Althea Alexis-Windsor
Mr. Mara Tidiane

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: KOFFI KUMELIO A. AFANDE
SIGNATURE: DATE: 19 Feb 2010

1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of an interlocutory appeal filed by Gaspard Kanyarukiga ("Appellant" or "Defence") on 27 November 2009[1] against the "Decision on Defence Motion for Disclosure and Return of Exculpatory Documents Seised from the Accused" issued on 30 October 2009 ("Impugned Decision") by Trial Chamber II of the Tribunal ("Trial Chamber"). The Prosecution responded on 1 December 2009.[2] The Appellant filed his reply on 7 December 2009.[3]

## A. Background

2. On 16 July 2004, the Appellant was arrested in South Africa by the South African immigration authorities.[4] On 19 July 2004, he was handed over to the Tribunal's authorities and a hand-written inventory of items in his possession at the time of the arrest was made by the Prosecution ("First Inventory").[5] On 1 September 2004, the Prosecution disclosed to the Defence an inventory of items seized from the Appellant ("Second Inventory").[6] On 10 September 2004, the Appellant made hand-written annotations on the Second Inventory indicating that certain items that were seized from him were missing from the list ("Annotated Inventory").[7] On 17 September 2004, the Defence wrote to the Prosecution demanding the return of certain items missing from the Second Inventory, including "[a] travel permit (in original) which our client obtained from The Military Commander of Gitarama barracks for a trip from Gitarama to Kigali" and "[a] travel

[1] Appeal of the 30 October 2009 Trial Chamber II['s] 'Decision on Defence Motion for Disclosure and Return of Exculpatory Documents Seised from the Accused', 27 November 2009 ("Appeal").
[2] Respondent's Response to Appeal of the 30 October 2009 Trial Chamber II's 'Decision on Defence Motion for Disclosure and Return of Exculpatory Documents Seised from the Appellant', 1 December 2009 ("Response").
[3] Reply to Respondent's Response to Appeal of the 30 October 2009 Trial Chamber II['s] 'Decision on Defence Motion for Disclosure and Return of Exculpatory Documents Seised from the Accused', 7 December 2009 ("Reply"). On 8 December 2009, the Appellant filed a *Corrigendum* to the Reply ("*Corrigendum* to Reply").
[4] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Prosecutor's Further Response to the Interim Order of the Trial Chamber Concerning the Defence Request for Rule 68 Disclosure, 24 September 2009 ("Second Report"), Annex II. *See also* Appeal, para. 13.
[5] *See* Impugned Decision, para. 4; *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Prosecutor's Response to the interim order of the Trial Chamber Concerning the Defence Request for Rule 68 Disclosure, 21 August 2009 ("First Report"), confidential, Annex A; Appeal, para. 14.
[6] Interoffice Memorandum entitled "Disclosure of Inventory of Seized Items-Gaspard Kanyarukiga" from Senior Trial Attorney to Court Management Section, confidential, 1 September 2004.
[7] First Report, Annex D.

permit (in original) which our client obtained from Col. Mayuya (Kanombe) Military Barracks for a trip from Kigali to Gitarama".[8]

3. On 7 August 2009, the Defence filed a motion requesting the Trial Chamber to order the Prosecution to disclose immediately "all [feuille] de route or laissez passer documents" seized from the Appellant at the time of his arrest (collectively, "Laissez-Passer").[9] The Defence submitted that the Laissez-Passer were issued to the Appellant on 14, 15, and 16 April 1994 in Gitarama and Kigali and that they supported his alibi because they would "demonstrate the absence of the Accused from Nyange on those dates."[10] In its response to the Request, the Prosecution asserted that it did not have the Laissez-Passer in its possession.[11]

4. On 18 August 2009, in an interim order, the Trial Chamber instructed the Prosecution to provide further information regarding the arrest of the Appellant and the seizure, inventory, and custody of the Appellant's possessions.[12] In its First Report, the Prosecution noted the Defence's request for disclosure of the Laissez-Passer, but requested "further precision" on the number and description of the requested documents so that it could carry out its disclosure obligations.[13]

5. On 25 August 2009, the Defence filed the Motion for a Stay of Proceedings arguing, *inter alia*, that the disappearance of the Laissez-Passer while in the Prosecution's custody resulted in unfairness to the Appellant.[14] On 28 August 2009, the Trial Chamber denied this motion, but indicated that it "[r]emain[ed] seized of the matter".[15] In so finding, the Trial Chamber reminded the Prosecution of its obligations under Rules 41 and 68(A) of the Rules of Procedure and Evidence of

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[8] Appeal, para. 18. *See also* Annex to *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Extremely Urgent Defence Motion for a Stay of Proceedings Due to the Impossibility of Having a Fair Trial Following the Disappearance of Exculpatory Evidence in the Hands of the Prosecutor, 25 August 2009 ("Motion for a Stay of Proceedings"). According to the Appellant, his Counsel sent numerous other requests to the Prosecution on 4 February, 26 March, 1 April, 15 April, and 31 July 2009 requesting, *inter alia*, the return of the Laissez-Passer. *See* Appeal, paras. 19-23.

[9] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Motion for the Prosecution to Disclose and Return Exculpatory Documents Seized from the Accused, 7 August 2009 ("Request"), p. 4.

[10] Request, paras. 2, 3.

[11] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Prosecutor's Response to the Motion for theProsecution [*sic*] to Disclose and Return Exculpatory Documents Seized from the Accused, 11 August 2009, paras. 9, 12, 13.

[12] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-I, Interim Order Concerning the Defence Request for Rule 68 Disclosure, 18 August 2009 ("Interim Order"), p. 3.

[13] First Report, para. 20.

[14] Motion for a Stay of Proceedings, paras. 30-34, 46, 47, p. 19.

[15] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Decision on the Extremely Urgent Defence Motion for a Stay of the Proceedings, 28 August 2009 ("Decision on Stay of Proceedings"), Disposition, p. 5.

the Tribunal ("Rules"). It also reminded the Prosecution to "report back to the [Trial] Chamber with any information regarding the items missing from the second inventory list [...]".[16]

6. On 24 September 2009, the Prosecution filed its Second Report indicating that it had not located any laissez-passer or other travel documents pertaining to the Appellant, that the UNDF inventory did not contain any laissez-passer, and that the South African authorities involved in the arrest and search had no knowledge of any such item.[17] On 30 September 2009, the Defence filed a "Provisional Formal Notice of Alibi" indicating, *inter alia*, that it intends to rely on the Laissez-Passer.[18]

7. In the Impugned Decision, the Trial Chamber denied the Defence Request for the disclosure and return of the Laissez-Passer on the ground that "it has not been established that the laissez-passers are in the custody or control of the Prosecution, [and as] there is no basis for the [Trial] Chamber to order disclosure of the requested items".[19] It added that:

> Moreover, the Chamber previously held that the requested documents would only be part of a defence of alibi and that the Accused's alibi may still be effectively presented through other means, including witness testimony placing the Accused at the locations where he allegedly was during the events in question. Even assuming that the laissez-passers existed and were subsequently lost, the Chamber finds that any resulting prejudice would not have been irreparable. At best, the laissez-passers would have helped establish that the Accused *could have gone* to a specific location. They would not have been proof of the Accused's location at any given time. Additional elements, such as testimonies, would still have been required to establish an alibi. In this regard, the Chamber recalls that on 19 October 2009, the Chamber ordered the Defence to disclose to the Prosecution by 6 November 2009, the names, current locations and addresses in 1994 of all witnesses upon whom it intends to rely to establish the alibi.[20]

8. On 20 November 2009, the Trial Chamber certified the following issues for appeal: (i) whether the Trial Chamber's finding, in paragraph 19 of the Impugned Decision, that there was no basis to order the disclosure of the laissez-passers was correct; and (ii) whether the Trial Chamber's statement in paragraph 20 of the Impugned Decision on the defence of alibi, including on the laissez-passers, was correct.[21]

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[16] Decision on Stay of Proceedings, paras. 17-19, p. 5. Upon commencement of the trial, the Trial Chamber again reminded the Prosecution to continue its search for the allegedly items missing from the Second Inventory. *See* Impugned Decision, para. 7. On 11 September 2009, the Trial Chamber ordered the Registry to transmit to the Prosecution a copy of the list of items seized from the Appellant at the time of his admission to the United Nations Detention Facility ("UNDF") in Arusha. *See The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Order for Disclosure of UNDF Inventory List, 11 September 2009.

[17] Second Report, paras. 4-6.

[18] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Provisional Formal Notice of Alibi, 30 September 2009.

[19] Impugned Decision, para. 19.

[20] Impugned Decision, para. 20.

[21] *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Decision on the Defence Motion for Certification to Appeal the Trial Chamber's Decision of 30 October 2009, 20 November 2009 ("Certification Decision"), Dispositive, p. 6.

### B. Standard of Review

9. Decisions by Trial Chambers on disclosure are discretionary decisions to which the Appeals Chamber must accord deference.[22] In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber has committed a discernible error resulting in prejudice to that party.[23] The Appeals Chamber will only overturn a Trial Chamber's discretionary decision where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.[24]

### C. Discussion

#### 1. Alleged Error Relating to the Disclosure of the Laissez-Passer (Ground of Appeal 1)

##### (a) Submissions of the Parties

10. The Appellant submits that the Trial Chamber erred in finding that there was no basis to order disclosure of the Laissez-Passer on the ground that the Trial Chamber: (i) incorrectly interpreted the applicable law, in particular Rules 41 and 68 of the Rules;[25] (ii) based its decision on a patently incorrect conclusion of fact;[26] and (iii) abused its discretion by taking an unfair and unreasonable decision.[27] He therefore submits that dismissing the Request and permitting the Prosecution "to profit by its gross negligence" brings the administration of justice into disrepute.[28]

11. The Prosecution responds that the record confirms that the said documents are not within its possession or knowledge and that there thus was no basis to order their disclosure.[29] It contends that the Trial Chamber was entitled to find that it acted in good faith when it stated that

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[22] *E.g.*, *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.1, Decision on Appellant Radovan Karadžić's Appeal Concerning Holbrooke Agreement Disclosure, 6 April 2009 ("*Karadžić* Decision"), para. 14; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.13, Decision on "Joseph Nzirorera's Appeal From Decision on Tenth Rule 68 Motion", 14 May 2008 ("*Karemera* Decision"), para. 6.

[23] *Karadžić* Decision, para. 14, *referring to Prosecutor v. Gotovina et al.*, Case No. IT-06-90-AR73.3, Decision on Joint Defence Interlocutory Appeal Against Trial Chamber's Decision on Joint Defence Motion to Strike the Prosecution's Further Clarification of Identity of Victims, 26 January 2009, para. 5.

[24] *Karadžić* Decision, para. 14; *Karemera* Decision, para. 6.

[25] Appeal, paras. 73-78.

[26] Appeal, para. 78 (p. 25).

[27] Appeal, paras. 79, 80.

[28] Appeal, para. 79. The Appellant argues that it cannot be that the Prosecution's only duty is to search for inculpatory evidence while ignoring requests to retrieve exculpatory evidence until having to be ordered to do so after five years. He adds that ignoring its role as "minister of justice" and failing to resolve the issue in 2004, was gross negligence on the part of the Prosecution. *See* Reply, paras. 4, 13.

[29] Response, paras. 20, 21.

a full search for the said documents has been conducted.[30] The Prosecution finally argues that the Trial Chamber based its decision on the factual determination that the documents were not in the possession of the Prosecution, and not on any misinterpretation of law or fact.[31]

12. The Appellant replies that the Impugned Decision was indeed a legal determination[32] and that the "actual knowledge" in Rule 68(A) of the Rules refers to knowledge of the exculpatory quality of the evidence and not the existence or whereabouts of the evidence.[33]

(b) Analysis

13. The Appellant's arguments on appeal are based on alleged violations of Rules 41 and 68 of the Rules.[34] However, the Appeals Chamber observes that, in disposing of the Request, the Trial Chamber limited its analysis to whether the Prosecution violated its disclosure obligations under Rule 68 of the Rules since the Appellant's Request was solely based on Rule 68 and only raised this issue. The Trial Chamber certified for appeal two paragraphs of the Impugned Decision.[35] Consequently, the Appeals Chamber will limit its analysis to the questions certified in the Certification Decision and will not consider any question of alleged violation of Rule 41 of the Rules, as this matter is not properly before it.

14. The Appeals Chamber now turns to the Appellant's contention that the Trial Chamber incorrectly applied Rule 68 of the Rules by reversing the burden of proof when requiring the Defence to establish that the sought documents are within the custody and control of the Prosecution.[36]

15. Rule 68(A) of the Rules provides that:

> The Prosecut[ion] shall, as soon as practicable, disclose to the Defence any material which in [its] actual knowledge [...] may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.

16. The Appeals Chamber recalls that, in order to show that the Prosecution is in breach of its disclosure obligation pursuant to Rule 68(A) of the Rules, the Defence must identify specifically the

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[30] Response, para. 20.
[31] Response, para. 15.
[32] Reply, para. 10.
[33] Reply, para. 14.
[34] The Appellant submits that ruling in the Prosecution's favour is unjust as it is culpable of gross negligence. He further asserts that the Trial Chamber erroneously failed to grant him relief under Rule 5 for the violations of Rules 41 and 68 of the Rules. *See* Appeal, paras. 73-78; Reply, paras. 1, 13; *Corrigendum* to Reply, para. 1.
[35] Certification Decision, Disposition, p. 6.
[36] Appeal, paras. 73, 74; Reply, paras. 3, 12, 19. In the Appellant's view, the Defence is only required to satisfy the Trial Chamber on a *prima facie* basis that the Prosecution has custody or control of the documents. *See* Appeal, paras. 58, 59.

materials sought, present a *prima facie* showing of their probable exculpatory nature, and prove the Prosecutor's custody or control of the materials requested.[37] Thus, contrary to the Appellant's submission,[38] his burden of proof could not be met by merely showing a *prima facie* case of custody or advancing a "presumption of possession".

17. In the Impugned Decision, the Trial Chamber correctly recalled the applicable law, examining in turn the three criteria.[39] It found that the Appellant had sufficiently identified the Laissez-Passer and established *prima facie* their exculpatory nature, but concluded that, as it had not been established that the sought items were in the custody or control of the Prosecution, there was no basis for ordering their disclosure.[40] The Appeals Chamber finds no error in the Trial Chamber's interpretation and application of the applicable law.

18. The Appeals Chamber does not agree with the Appellant's contention that the Trial Chamber based its decision on an incorrect conclusion of fact.[41] While the Appeals Chamber notes with concern the Prosecution's apparent failure to respond to the Appellant's 2004 assertion that items were missing from the Second Inventory,[42] the Appeals Chamber finds that the existence of the Laissez-Passer among the items seized from the Appellant has not been established. No laissez-passer or travel document was mentioned in the First Inventory or the Second Inventory.[43] Furthermore, no evidence supports the Appellant's claim that, at the time of his arrest, these items were lodged inside medicine plastic bags.[44] While two plastic medicine bags were seized during the arrest, they were empty.[45]

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[37] *See, e.g., Karemera* Decision, para. 9; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, Decision on Motions for Access to *Ex Parte* Portions of the Record on Appeal and For Disclosure of Mitigating Material, 30 August 2006, para. 31; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005 ("*Kajelijeli* Appeal Judgement"), para. 262.

[38] Appeal, paras. 70, 73, 74; Reply, paras. 12, 13. Referring to paragraph 17 of the Response, the Appellant notes that the Prosecution acknowledges that custody and control need only be shown on a *prima facie* basis (*see* Reply, para. 12). It is nevertheless clear from paragraphs 16, 18, and 19 of the Response that the Prosecution has made a technical error.

[39] Impugned Decision, paras. 15-17.

[40] Impugned Decision, para. 19.

[41] Appeal, para. 78. In support, the Appellant refers, *inter alia*, to the early notation made by the Appellant on the inventory, the discrepancies between the two inventories, the "bizarre and unexplained claim that uncatalogued items were found in an accessible drawer or safe", the failure of the Prosecution to respond for five years to the Defence claim, as well as to explain the discrepancies and the reason for not contacting earlier South African authorities, its admission that certain items seized are now lost, the unexplained problem of the location of the now missing bag, which had contained the exculpatory documents or the location of the now-missing medicines. *See* Appeal, paras. 4, 6, 60, 61, 69; Reply, para. 11.

[42] The Appeals Chamber notes the Appellant's submissions claiming the Prosecution's failure to respond to several requests regarding the missing items, submissions to which the Prosecution did not object.

[43] *See* Annexes A and D of the First Report.

[44] Appeal, paras. 14, 27. *See also* Request, paragraph 11. The handwritten annotations made by the Appellant on the Second Inventory mention missing documents, including two laissez-passers, but no indication that such documents were contained in a plastic bag or medicine plastic bag. *See* unofficial translation made by the Defence in his Request, para. 8.

[45] First Report, para. 14; Annex F of the First Report.

19. In sum, the Appeals Chamber finds that the Trial Chamber did not abuse its discretion in concluding that the Laissez-Passer were not within the custody or control of the Prosecution. The Trial Chamber ordered the Prosecution to explain the discrepancies between the First and Second Inventory.[46] The Trial Chamber also reminded the Prosecution to search for the items omitted from the Second Inventory.[47] In response, the Prosecution made two additional submissions on the matter and obtained information from the UNDF and from police and immigration officials in South Africa.[48] However, despite these efforts, the Prosecution has not discovered the documents sought by the Appellant.[49] It was therefore open to the Trial Chamber to conclude that the Laissez-Passer were not in the Prosecution's custody or control. The Appeals Chamber considers that the Trial Chamber, in endeavouring to obtain additional information on the issue before deciding the matter, carefully exercised its discretion.[50]

20. For the foregoing reasons, the Appeals Chamber finds that the Appellant has failed to demonstrate that the Trial Chamber committed a discernible error in finding that there was no basis to order the disclosure of the Laissez-Passer. Accordingly, the first ground of appeal is dismissed.

### 2. Alleged Error Relating to the Alibi (Ground of Appeal 2)

#### (a) Submissions of the Parties

21. The Appellant submits that the Trial Chamber incorrectly interpreted the applicable law and erred in its statement on the law on the defence of alibi by implying that the Laissez-Passer, in and of themselves, would not be sufficient to raise a reasonable doubt as to his guilt.[51] He asserts that this pre-judged evidence by determining that the exculpatory documentary evidence would not be sufficient to raise a reasonable doubt without having seen it and, therefore, committed a discernible error amounting to an abuse of discretion.[52]

22. The Prosecution responds that the Trial Chamber has not misapplied the burden of proof nor has misapplied the facts of the case.[53] Instead, it submits that the Trial Chamber found that, notwithstanding the Laissez-Passer, the Defence is not precluded from presenting an alibi by other means, which, in the Prosecution's view, means that the Appellant has not been prejudiced by the

[46] Interim Order, p. 3.
[47] *See* Decision on Stay of Proceedings; Interim Order: *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, T. 17 September 2009 p. 46; *id.*, T. 31 August 2009 p. 6.
[48] *See* First and Second Report.
[49] *See* Impugned Decision, paras. 17-18.
[50] *See* Impugned Decision, paras. 3-12, 17, 18.
[51] Appeal, paras. 85, 88; Reply, paras. 15, 17.
[52] Appeal, para. 87; Reply, para. 17.
[53] Response, paras. 22, 28.

determination that the Laissez-Passer are not within the custody or control of the Prosecution.[54] The Prosecution argues that the Trial Chamber has not made any finite pronouncement on alibi evidence, unlike in the *Zigiranyirazo* case, upon which the Appellant relies.[55]

23. The Appellant replies that he indeed has been prejudiced because the absence of the Laissez-Passer may "weaken" any other evidence the Defence may adduce in relation to the issue of alibi.[56]

(b) Analysis

24. The Appeals Chamber finds that the Trial Chamber erred by misinterpreting the applicable law on alibi in stating that the Laissez-Passer "would not have been proof of the [Appellant's] location at any given time".[57] As noted by the Appellant,[58] he is not required to prove his location at any given time, but rather may present evidence which is likely to raise a reasonable doubt in the Prosecution case, for example by producing evidence tending to show that he was away from the crime scene at any time relevant to the charges.[59]

25. Furthermore, the Appeals Chamber finds that the Trial Chamber's commentaries upon the evidentiary methods by which the Appellant may present his alibi defence and on any alleged prejudice were unnecessary and premature. As the Trial Chamber correctly concluded that the Prosecution was not in breach of Rule 68(A) of the Rules, it should have refrained from making such comments.

26. However, these errors do not invalidate the Trial Chamber's decision to deny the Request as the Trial Chamber's impugned statement in paragraph 20 was extraneous to the Impugned Decision, which is correctly based on the finding that it has not been established that the Prosecution has control or custody of the Laissez-Passer. Accordingly, the Appeals Chamber finds that this error did not result in any prejudice to the Appellant. The second ground of appeal is dismissed.

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[54] Response, paras. 27, 30, 31.
[55] Response, paras. 26, 28, 29.
[56] Reply, para. 18.
[57] *See* Impugned Decision, para. 20.
[58] Appeal, paras. 84, 85; Reply, paras. 15, 19, *referring to Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Judgement, 16 November 2009 ("*Zigiranyirazo* Appeal Judgement").
[59] *Zigiranyirazo* Appeal Judgement, para. 17 *referring to, inter alia, François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009, para. 331; *Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 414; *Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007, para. 184; *Emmanuel Ndindabahizi v. The Prosecutor*, Case No. ICTR-01-71-A, Judgement, 16 January 2007, para. 66; *Kajelijeli* Appeal Judgement, paras. 41, 42; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Judgement, 9 July 2004, para. 60.

### 3. Conclusion

27. Having dismissed the two grounds of appeal, the Appeals Chamber need not address the Appellant's request for a remedy.

## D. Disposition

28. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal in its entirety.

Done in English and French, the English version being authoritative.

Done this 19th day of February 2010,
At The Hague,
The Netherlands.

Judge Patrick Robinson
Presiding

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