

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No. MICT-13-38-PT

Date: 15 August 2022

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Graciela Susana Gatti Santana
Judge Elizabeth Ibanda-Nahamya

Registrar: Mr. Abubacarr M. Tambadou

Decision of: 15 August 2022

PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF
EVIDENCE OF WITNESS KAB027 PURSUANT TO RULE 110**

Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Rashid S. Rashid
Mr. Rupert Elderkin

Counsel for Mr. Félicien Kabuga:

Mr. Emmanuel Altit

THE TRIAL CHAMBER OF the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively);¹

BEING SEIZED OF a motion filed on 26 July 2022,² in which the Prosecution requests, pursuant to Rule 110 of the Rules of Procedure and Evidence (“Rules”), the admission in lieu of oral testimony of Witness KAB027’s Rule 110 statement signed in 2022, which consists of two witness statements given to the Prosecution of the International Criminal Tribunal for Rwanda in 2009 and the corrections he provided in relation to those statements to the Prosecution in 2022;³

NOTING the Prosecution’s submissions that: (i) the proposed evidence satisfies the requirements of Rule 110 of the Rules and is accompanied by a declaration in accordance with Rule 110(B) of the Rules; (ii) it is relevant, reliable, and has probative value; (iii) it does not go to proof of the acts and conduct of Félicien Kabuga; and (iv) all relevant factors favour its admission, including its cumulative nature;⁴

NOTING that Kabuga did not file a response to the Motion;

RECALLING the applicable law governing the admission of evidence pursuant to Rules 105 and 110 of the Rules, as set out in a previous decision;⁵

RECALLING FURTHER that any evidence admitted pursuant to this decision will only be placed on the record after the opening of the trial in this case and following instruction from the Trial Chamber to the Registry;⁶

CONSIDERING that the proposed evidence is relevant to the charges in the Indictment, on the basis that Witness KAB027’s evidence concerns allegations about an attack and killings in Gisenyi prefecture by the *Interahamwe* against Tutsi who sought refuge at Nyundo parish;⁷

¹ See Order Assigning a Trial Chamber, 1 October 2020, p. 1.

² Prosecution Fourth Motion for the Admission of Evidence Pursuant to Rule 110: KAB027, 26 July 2022 (public, with confidential annex A) (“Motion”).

³ Motion, paras. 1, 7, Annex A, p. 1, nn. 1-8, referring to document with Rule 70 number 70864.

⁴ Motion, paras. 2-6. Specifically, the Prosecution submits that Witness KAB027’s evidence is relevant to paragraph 61(d) of the Indictment and corroborated by Witnesses KAB074 and KAB067. See Motion, paras. 2, 5, Annex A, pp. 1, 2. See also Prosecution’s Second Amended Indictment, 1 March 2021 (public, with public and confidential annexes) (“Indictment”).

⁵ See Decision on Prosecution First Omnibus Motion for Admission of Evidence Pursuant to Rule 110, 26 April 2022 (confidential), paras. 7-11.

⁶ See Decision on Prosecution Omnibus Motion for Admission of Evidence Pursuant to Rule 112, 11 April 2022, para. 9. See also Decision on Prosecution Third Motion for Admission of Evidence Pursuant to Rule 110: Witnesses KAB050 and KAB097, 15 June 2022 (confidential), para. 4, n. 14.

⁷ See, e.g., document with Rule 70 number 70864, e-court pp. 2, 3, 5 (English version); Indictment, para. 61 (d). See also document with Rule 70 number 70864, e-court p. 6 (French version); Prosecution Pre-Trial Brief and Witness and

CONSIDERING FURTHER that the proposed evidence does not go to proof of the acts and conduct of Kabuga as charged in the Indictment, is cumulative in nature,⁸ and there are no factors militating against its admission pursuant to Rule 110(A)(ii) of the Rules;

NOTING that, while the Prosecution attached the Rule 110(B) declaration to Witness KAB027's proposed evidence, the corrections that Witness KAB027 made to his 2009 statements are not mentioned in the declaration;⁹

CONSIDERING that Witness KAB027's Rule 110(B) declaration and the corrections he made to his 2009 statements were signed on the same day, as well as the fact that those corrections do not alter the substance of the witness's proposed evidence, and that, as such, the Trial Chamber does not find it necessary for the Prosecution to file a further declaration for the corrections provided by Witness KAB027;¹⁰

EMPHASIZING that this decision has also been taken bearing in mind the overall context of the amount of other evidence that has already been found appropriate for admission following the commencement of trial;

FINDING that the proposed evidence is appropriate for admission pursuant to Rules 105 and 110 of the Rules, without this witness being required to appear for cross-examination;

FOR THE FOREGOING REASONS,

HEREBY GRANTS the Motion; and

DECIDES that the proposed evidence is appropriate for admission and shall be marked for identification pending the further decision to admit the evidence following the commencement of trial.

Exhibit List, 23 August 2021 (confidential, with confidential annexes A to C; public redacted version filed on 12 October 2021) ("Pre-Trial Brief"), para. 189. The witness also provides evidence about the presence of senior officials, including Colonel Anatole Nsengiyumva, at Nyundo parish during the alleged killings. *See* Pre-Trial Brief, paras. 8, 177, 179, 192.

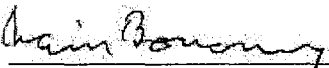
⁸ *See, e.g.*, Pre-Trial Brief, Annex B ("Prosecution Witness Summaries"), pp. 86 (Witness KAB074), 77 (Witness KAB067). The Trial Chamber notes that, as indicated in the Prosecution Witness Summaries, it anticipates hearing Witnesses KAB074 and KAB067 *viva voce*.

⁹ *See* document with Rule 70 number 70864, e-court pp. 1, 6 (French version). *See also* Motion, Annex, p. 2, n. 10. The Trial Chamber notes that the Kinyarwanda version of document with Rule 70 number 70864 includes the original Rule 110(B) declaration, which is dated, stamped, and signed by the notary and Witness KAB027. *See* document with Rule 70 number 70864, e-court pp. 1, 2 (Kinyarwanda version).

¹⁰ *See* document with Rule 70 number 70864, e-court pp. 1, 6 (French version).

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

Done this 15th day of August 2022,
At Arusha,
Tanzania



Judge Iain Bonomy
Presiding Judge

[Seal of the Mechanism]



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