



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICR-98-44-1
21-04-2004
(11905-11902)

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TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Andréia Vaz, presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registry: Adama Dieng

Date filed: 1 December 2003

JUDICIAL RECORDS
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THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA and
André RWAMAKUBA

Case No. ICTR-98-44-T

DECISION ON THE MOTION BY THE DEFENCE FOR JOSEPH
NZIRORERA FOR DISCLOSURE OF VIDEO TAPE REGARDING
PROSECUTION WITNESSES

Rules 66(B) and 73 of the Rules of Procedure and Evidence

Counsel for the Accused:
Peter Robinson and Dior Diagne

Counsel for the Co-Accused:
Didier Skornicki and John Traversi
Charles Roach and Frédéric Weyl
David Hooper and Andreas O'Shea

Office of the Prosecutor:
Don Webster
Dior Fall
Ifeoma Ojemeni
Simone Monasebian
Holo Makwaia
Tamara Cummings-John

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the Tribunal),

SITTING as Trial Chamber III, composed of Judge Andréia Vaz, presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey (the Chamber);

BEING SEIZED of the *Motion for Disclosure of Video Tape*, filed on 3 November 2003 by the Defence for Joseph Nzirorera (the Motion, the Defence and the Accused) pursuant to Rule 73(B) of the Rules of Procedure and Evidence (the Rules);

NOTING that the Motion satisfies one of the requests the Chamber is seized of in the *Second Motion for Inspection of Items Material to the Defence*, filed by the Defence on 6 October 2003;

NOTING the Prosecutor's Response, in its relevant paragraphs, to the Motion referred to in the previous paragraph entitled *Prosecutor's Response to Joseph Nzirorera's Second Motion for Inspection of Items Material to the Defence*, filed on 10 October 2003 (the Response);

DECIDES solely on the basis of the parties' briefs, pursuant to Rule 73(A) of the Rules.

1. The Defence requests that the Prosecution be ordered to disclose to the Defence a copy of the video tape filmed in Ruhengeri during its investigations, and which contains recordings of some prosecution witnesses in the instant case and in the *Kajelijeli* case. It notes that Trial Chamber II ordered the disclosure of this tape to the Defence in the *Kajelijeli*¹ case. The Defence adds that this tape should have been disclosed within the time limits provided for in Rule 66(A)(ii) of the Rules, insofar as it contains, in its view, statements made by some prosecution witnesses during the investigations carried out by the Prosecution.
2. The Prosecution responds that it objects to the disclosure, because of the protective measures applied to these witnesses. The Defence replies that it has agreed to be bound by whatever protective measures the Chamber shall deem necessary for the protection of the witnesses concerned.
3. Since the Chamber has not viewed the tape, it does not have facts to enable it to determine whether the tape contains statements of prosecution witnesses who should testify in this case within the meaning of Rule 66(A) (ii) of the Rules. However, it is satisfied that the tape is relevant to the preparation of the defence of the

¹ The Defence is referring to the *Decision on the Motion of the Parties Concerning the Inspection and Disclosure of a Video tape* rendered in *The Prosecutor v. Juvenal Kajelijeli*, No. ICTR-98-44A-T on 28 April 2003.

Accused Nzirorera. It is therefore necessary to allow Lead Counsel for the Accused Nzirorera and the Accused himself to view the tape together, pursuant to Rule 66(B) of the Rules. However, considering the fears raised by the Prosecution regarding the safety of the witnesses who appear on the tape, the Chamber reminds the Defence of its obligations regarding the confidentiality of information that may reveal the identity of protected witnesses in this and other cases².

4. The Defence further requests the Chamber to issue a general order obliging the Prosecution to respect the time limits for disclosure of any other video or audio recording containing statements made by prosecution witnesses, as provided for in Rule 66(A)(ii) of the Rules. The Prosecution has not responded to this request.

5. The Chamber considers, until there is proof to the contrary³, that the Prosecution is presumed to have complied with its obligations regarding the disclosure of materials. The Chamber notes that the Defence has not established that the Prosecution is in possession of recordings containing previous statements of prosecution witnesses within the meaning of Rule 66(A)(ii) of the Rules.

FOR THE FOREGOING REASONS,

THE CHAMBER,

I. ORDERS the Prosecutor, pursuant to Rule 66(B) of the Rules, to allow Lead Counsel for the Accused Nzirorera and the Accused himself to view the tape together;

II. REMINDS Lead Counsel for the Accused Nzirorera and the Accused himself of their obligations in respect of the applicable orders on protective measures for prosecution witnesses;

III. ORDERS Lead Counsel for the Accused Nzirorera and the Accused himself, once they have viewed the tape, not to discuss the contents of the said tape except between themselves or before the Chamber;

IV. DISMISSES the Motion in all other respects.

² See, *inter alia*, the *Decision on the Prosecutor's Motion for Protective measures for Witnesses*, rendered by Trial Chamber II on 12 July 2000 in respect of the Accused Nzirorera, and the witnesses who had testified in the case of *The Prosecutor v. Juvenal Kajelijeli* (No. ICTR-98-44-T), the *Decision on the Prosecutor's Motion for Protective Measures for Witnesses* rendered on 6 July 2000.

³ See on this point, *mutatis mutandis*, Appeals Chamber of the International Tribunal for former Yugoslavia, *The Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-A, *Decision on the Appellant's Motions for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings*, 26 September 2000, para. 45.

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The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera and André Rwamakuba, Case No. ICTR-98-44-T

Arusha, 1st December 2003

[Signed]
Andrésia Vaz
Presiding

[Signed]
Flavia Lattanzi
Judge

[Signed]
Florence Rita Arrey
Judge

[Seal of the Tribunal]

