



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-44-PT
13-7-2005
(21721-21418) 21721
mp

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Karin Hökberg
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 13 July 2005

JUDICIAL RECORDS ARCHIVES
ICTR
2005 JUL 13 P 4: 54
[Signature]

THE PROSECUTOR

v.

**Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-PT

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR ORDER ALLOWING MEETING
WITH DEFENCE WITNESS**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Dior Fall
Gregory Lombardi
Iain Morley
Sunkarie Ballah-Conteh
Tamara Cummings-John
Takeh Sendze

Defence Counsels for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson

[Signature]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Karin Hökberg and Gberdao Gustave Kam (“Chamber”);

BEING SEIZED of “Joseph Nzirorera’s Motion for Order Allowing Meeting with Defence Witness”, filed by the Defence of the Accused (“Defence”) on 24 March 2005;

CONSIDERING the Prosecution’s Response thereto filed on 29 March 2005, and the Defence’ Reply thereto filed on 4 April 2005;

CONSIDERING that in accordance with the Chamber’s Order of 4 July 2005,¹ the Prosecution filed additional submission with respect to the Motion,²

HEREBY DECIDES the Motion, pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”).

INTRODUCTION

1. The commencement of the trial in the instant proceedings is scheduled on 5 September 2005. The Chamber is now seized of a Defence Motion requesting an Order to allow it to meet confidentially with a potential defence Witness, George Rutaganda, who is presently being held in the United Nations Detention Facility (UNDF) to serve his sentence after the Tribunal convicted him for genocide.

2. Defence Counsel met with Mr. Rutaganda on one previous occasion without any interference. From the supplemental information provided by the Prosecution,³ it appears that Prosecution in the *Nyiramasuhuko et al.* case was concerned about disclosure of certain confidential information during a meeting between Defence Counsel for the Accused Ntahobali and Mr. Rutaganda. It requested therefore – and permission was granted in March 2005 – that a representative of the Prosecution be present during this meeting. When the Registry was seized of a similar request from the Defence Counsel for the Accused Nzirorera, the Prosecution reiterated the same concerns. The day before the scheduled meeting, on 22 March 2005, Defence Counsel was informed of the Registrar’s decision to accept the Prosecution’s request that a representative from the Prosecution be present during the meeting pursuant to Rule 64 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Rules on Detention of Persons”).

DISCUSSION

3. As a preliminary matter, the Prosecution argues that the Registrar’s decision should be appealed to the President pursuant to Rule 64 of the Rules on Detention of Persons, not the Chamber, and that the detainee, Mr. Rutaganda, alone has standing to make such an appeal.

¹ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44, Order for Filing Documents (TC), 4 July 2005.

² Prosecutor’s Submission in Compliance with Order for Filing Documents of 4 July 2005.

³ *Ibidem*.

4. Rule 64 of the Rules on Detention of Persons only provides a right for the detained person to appeal the Registrar's decision before the President.⁴ This Rule does not necessarily impede the Defence in the present case to submit the matter to the Chamber. Pursuant to Articles 19 and Article 20 of the Statute of the Tribunal ("Statute"), the Chamber has a duty to ensure a fair trial with respect to the rights of the Accused, including the Accused's right to obtain examination of a potential Witness on his behalf. Since this last issue is presently at stake, the Chamber is competent to decide this matter.

5. The Defence contends that the right of the Accused to obtain Witnesses on his behalf pursuant to Article 20(4)(e) of the Statute has been violated by the Prosecution's invocation of Rule 64 of the Rules on Detention of Persons. It submits that it has a right to conduct its investigation in advance of the commencement of trial and to be in a position to address all factual issues in the case in its opening statement, should it choose to do so. Relying on Rule 54 of the Rules, it argues that the Chamber has the power to review and overturn the Decisions of the Registrar when the right of an Accused to a fair trial is implicated.

6. While the Trial Chamber will ensure due respect of the rights of the Accused, it must also have due regard for the protection of the victims and witnesses.

7. Each party has a right to interview any Witness, as long as he or she consents, whether or not the Witness is to testify for the Prosecution or for the Defence. "Witnesses to a crime are the property of neither the Prosecutor nor the Defence; both sides have an equal right to interview them... [T]he mere fact that the person has agreed to testify for the Defence does not preclude the Prosecutor from interviewing him provided of course that there is no interference with the course of justice."⁵ Therefore, regardless of which party the witness has agreed to testify for, the same principles apply when any witness interview takes place.

8. However, the freedom to contact potential witnesses is not without limitation.⁶ In prior decisions, when a party wanted to interview a witness who was a convict of the Tribunal, the presence of neutral party was considered appropriate to preserve the rights of the Accused and the integrity of the process as long as the Witness agreed to the interview.⁷

9. In the present case, the Prosecution submits that Mr. Rutaganda received certain disclosures throughout his own trial before the Tribunal containing protected information. The Prosecution asserts that it would be prejudiced if the protected information were transmitted to the Defence.

10. Considering the Prosecution's concerns in light of the jurisprudence, while giving due regard to both the rights of the Accused and the protection of the Witness, the Trial Chamber

⁴ According to the Chamber's information, such a right has not been exercised by the detained witness in the present case.

⁵ *Prosecutor v. Mile Mrksic*, Case No IT-95-13/1, "Appeals Chamber Decision on Defence Interlocutory Appeal on Communication with Potential Witnesses of the Opposite Party", 30 July 2003.

⁶ *Ibidem*.

⁷ *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-I, Decision on Prosper Mugiraneza's Motion to Require the Registrar to Allow Access to a Witness (TC), 2 October 2003 at para 26; *The Prosecutor v. Joseph Nzirorera*, Case No. ICTR-98-44-I, Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Mr. Kambanda, Georges Ruggiu and Omar Serushago (TC), 29 September 2003, para. 5; *Le Procureur c. Casimir Bizimungu*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Vary Restrictions in the Trial Chamber's Decision of 2 October 2003 related to Access Jean Kambanda, 24 August 2004, paras 19-21.

believes that the presence of a neutral third party who is bound by confidentiality obligations, such as a representative of the Registrar, is also appropriate in this case.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. **GRANTS** the Motion and **ORDERS** that the Registrar make arrangements for the meeting to take place;
- II. **ORDERS** the appointment of a representative of the Registrar to accompany the Defence when it meets with Mr. Rutaganda;
- III. **DIRECTS** the Registrar to report directly to the Chamber if there is any issue regarding potential improper disclosure of information.

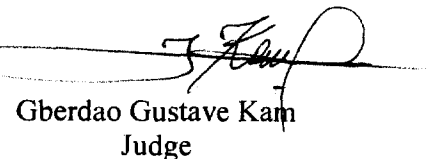
Arusha, 13 July 2005, done in English.



Dennis C. M. Byron
Presiding Judge



Karin Hökberg
Judge



Gberdao Gustave Kam
Judge

