



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-PT
13-9-2005
(23706 - 23704)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 13 September 2005

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THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-PT

DECISION ON DEFENCE MOTION TO EXCLUDE IN-COURT IDENTIFICATIONS

Rules 89 and 95 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Gregory Lombardi
Iain Morley
Gilles Lahaie
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Dagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson

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

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

BEING SEIZED of Joseph Nzirorera’s “Motion to Exclude In-Court Identifications” (“Motion”), filed on 14 July 2005;

CONSIDERING the Prosecutor’s Response thereto (“Response”), filed on 28 July 2005;

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

INTRODUCTION

1. The present trial is set to begin during the course of September 2005. Joseph Nzirorera (“Defence”) requests the Chamber prior to the start of trial, pursuant to Rules 89(C) and 95 of the Rules, to exclude in-court identification of the Accused by Prosecution witnesses because they have minimal probative value and constitute a method which casts substantial doubt on the reliability of any identification actually made.
2. Alternatively, the Defence advocates that the Chamber adopt the suggestion made by the Prosecutor in the *Kamuhanda* case, which consisted of creating a photographic array of six persons, including the Accused, for the witness to make an identification prior to the hearing.
3. The Prosecution opposes the Motion, submitting that the Trial Chamber can consider the probative value of the in-court identifications in the same way that it considers the probative value of any other evidence.

DISCUSSION

4. Rule 89(C) of the Rules states that “[a] Chamber may admit any relevant evidence which it deems to have probative value.” Evidence is admitted only when it has actually been proffered to the Chamber. It is at that point when the Chamber decides if the evidence is relevant and has some probative value.
5. The Chamber evaluates the admissibility of in-court identification¹ on a case-by-case basis.² If the evidence is admitted, the Chamber will then determine what weight, if any, to give to the identification after it has heard all of the necessary information and testimony.

¹ *The Prosecutor v. Emmanuel Nindabahizi*, Case No. ICTR-2001-71-I, Judgment and Sentence (TC), 15 July 2004, para. 245.

² *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Accused Nzirorera’s Motion to Exclude Evidence (TC), 6 February 2004, para. 10.

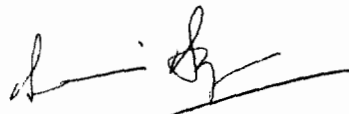
The weight given to the identification depends on the circumstances of the case.³ The in-court identification is only one element of evidence that is taken into consideration throughout the process of determining the culpability of the accused.⁴

6. The Chamber is not in a position to direct the Prosecution on how to conduct its case. At present, the Chamber does not know if the Prosecution will even proceed with an in-court identification of an accused by a witness. Therefore, the Chamber holds that excluding in-court identification at this stage is premature. If the identification is proffered as evidence, the Chamber will then decide if it is admissible pursuant to Rule 89(C) of the Rules and if the method by which the evidence is sought to be obtained “cast[s] substantial doubt on its reliability” for exclusion according to Rule 95 of the Rules.

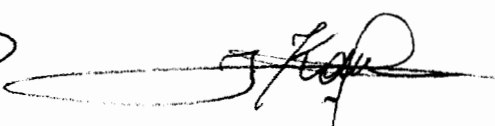
FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Motion in its entirety.

Arusha, 13 September 2005, done in English.


Dennis C. M. Byron
Presiding


Emile Francis Short
Judge


Gberdao Gustave Kam
Judge



³ *The Prosecutor v. Dragoljub Kunarac*, Case No. ICTY-96-23, Judgement (TC), 22 February 2001, para. 562.
⁴ *The Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgement and Sentence (TC), 22 January 2004, para. 63.