



OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 22 September 2005

THE PROSECUTOR

v.

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**ORAL DECISION ON ADMISSIBILITY OF WITNESS GFJ'S TESTIMONY ON A
SPECIFIC MEETING**

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

Defence Counsel 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

See transcripts E: p. 2; l. 7-36 (original language) – F: p. 2; l. 14 – p. 3; l. 12

MR. PRESIDENT:

This is our ruling on the application for the exclusion of the testimony of this witness relating to the Amahoro stadium meeting.

The Chamber recalls that pursuant to Rule 89(C) of the Rules, the Trial Chamber may admit any relevant evidence which it deems to have probative value. Although, it is not specifically provided

by the Rules, the Chamber has to exclude testimony when its prejudicial effect outweighs its probative value. The admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, an issue to be decided by the Trial Chamber after hearing the totality of the evidence. And I can refer to the Appeals Chamber's decisions, notably the case cited by counsel, Prosecution versus Nyiramasuhuko, et al, Case Number ICTR 9721 AR 73, a decision on the appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the decision of Defence's urgent motion to declare parts of the evidence of Witnesses RV and QBZ inadmissible on the 2nd of July 2004.

Now, when it has been found that a material fact has not been sufficiently pleaded in the indictment, this alone does not render the evidence inadmissible. The evidence can be admitted to the extent that it may be relevant to the proof of any allegation pleaded in the indictment, as was expressed in the above mentioned decision of the Appeals Chamber at paragraph 14.

In the instant case, the Chamber is of the view that the testimony made by the witness that Mathieu Ngirumpatse attended the meeting at Amahoro stadium should be excluded since it is a material fact which is neither pleaded in the indictment, nor disclosed in the witness statements and the witness statements previously disclosed. Moreover, its prejudicial effect to the Accused outweighs its probative value.

However, the fact that the meeting took place is evidence that is related to the general allegation pleaded in the indictment with respect to the mobilisation of the Interahamwe; to that extent only, the evidence is, therefore, admissible.

Now, for those reasons, the Chamber grants, in part, the Defence's objection as specified above.