



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1472-98-44-T
15-11-2005
(24661-24659)
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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 15 November 2005

THE PROSECUTOR

v.

**Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

2005 NOV 15 P 11:11
J. K. Nziro

**DECISION ON ADMISSION OF TRANSCRIPT OF PRIOR TESTIMONY OF
ANTONIUS MARIA LUCASSEN**

Rule 92bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
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Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nziro
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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

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

BEING SEIZED of the “Prosecutor’s Motion to Admit Transcript of Prior Testimony of Antonius Maria Lucassen” (“Motion”), filed on 6 October 2005;

CONSIDERING the Response thereto filed by the Accused Joseph Nzirorera on 10 October 2005;

CONSIDERING that the Accused Edouard Karemera and Mathieu Ndirumpatse have not filed any reply to the Motion;

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

INTRODUCTION

1. The trial in the current case commenced on 19 September 2005 with the presentation of the Prosecution’s case. In the instant Motion, the Prosecution moves under Rule 92*bis*(D) of the Rules to admit portions of transcripts of evidence of Antonius Maria Lucassen given in the first trial of the *Prosecutor v. Karemera et al.* on 28 November 2003 and 1 December 2003. It contends that requirements under Rules 89 and 92*bis* of the Rules are met. In addition, it claims that there is no need to require Mr. Lucassen to appear for cross-examination. The Defence for Nzirorera does not oppose the Motion. In addition, the time-limit to file a reply, as prescribed under Rule 73(E), has expired with respect to the Accused Karemera and Ndirumpatse.

DELIBERATION

2. Rule 92*bis* (D) of the Rules prescribes that “[a] Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused”.

3. In light of the above-mentioned Rule and pursuant to the jurisprudence,¹ the Chamber must be satisfied that the transcripts sought to be admitted goes to prove a matter other than the acts and conduct of the accused as charged in the Indictment. In addition, the Chamber must be satisfied that the said transcript is relevant and has a probative value within the meaning of Rule 89(C) of the Rules.

4. The Chamber has the discretionary power to admit, in a whole or in part, the evidence of a witness in the form of a transcript in lieu of oral testimony, and to decide whether or not to require the witness to appear for cross-examination.

5. The portions of the transcripts sought to be admitted contains description by a former Prosecution investigator of sites and locations in Rwanda – as well as description of maps, pictures and sketches of these places – relating to facts pleaded in the Indictment. The Chamber is satisfied that they go to prove a matter other than the acts and conduct of the Accused persons as charged in the Indictment. The requirements of Rule 92*bis* are therefore

¹ See *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-T, Décision relative à la requête du Procureur aux fins d’admission du témoignage d’un témoin expert (TC), 1 August 2003 ; *Prosecutor v. Bagosora*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for the Admission of Transcripts under Rule 92*bis* (TC), 21 May 2004, par. 9-10; *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Decision on the Prosecutor’s Motion for Admission of Testimony of Expert Witness (TC), 24 March 2005, par. 22-27.

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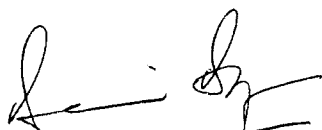
met. The Chamber is also satisfied that the material in question is relevant and has probative value within the meaning of Rule 89(C). Portions of the transcript of the evidence given by Mr. Lucassen in the trial *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera and André Rwamakuba*, dated 28 November 2003 and 1 December 2003 can be admitted as described below.

6. With respect to the cross-examination of the witness, the Prosecution claims that cross-examination is not required and the Defence did not oppose this assertion. The Chamber finds therefore that the witness is not required to appear for cross-examination.

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Motion and
- II. **DECIDES** pursuant to Rule 92bis (D) of the Rules, to admit the transcript of the evidence given by Mr. Lucassen in the *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera and André Rwamakuba*, dated 28 November 2003 (from page 54, line 5 to page 68, line 24 of the English transcript and from page 62, line 23 to page 78, line 5 of the French transcript) and the transcript dated 1 December 2003 (from page 1, line 1 to page 19 line 4 of the English transcript and from page 1, line 1 to page 22 , line 23 of the French transcript).

Arusha, 15 November 2005, done in English.



Dennis C. M. Byron
Presiding Judge



Emile Francis Short
Judge

Gberdao Gustave Kam
Judge

