



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
8-2-2006  
(25271-25269)  
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:** 8 February 2006

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

*Case No. ICTR-98-44-T*

**DECISION ON DEFENCE MOTION FOR ISSUANCE OF SUBPOENA TO  
WITNESS T**

*Rule 54 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 Diagne Mbaye and Félix Sow

**Defence Counsel for Mathieu Ngirumpatse**  
Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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## INTRODUCTION

1. The trial in this case started on 19 September 2005. The second trial session is scheduled to begin on 13 February 2006 with the continuation of the Prosecution's case. Trial Chamber III is seized of Joseph Nzirorera's Motion for Issuance of Subpoena to Witness T<sup>1</sup>, the Prosecutor's Response<sup>2</sup> and Nzirorera's Reply brief<sup>3</sup>. Witness T is listed as a Prosecution witness who has been granted special protective measures by the Chamber.<sup>4</sup> Counsel for Joseph Nzirorera wishes to have an interview with Witness T prior to his appearance for testimony, but Witness T has refused to meet him. As a result, Joseph Nzirorera filed this Motion requesting the Chamber to issue a subpoena to Witness T for such an interview.

## DISCUSSION

2. Nzirorera claims that the requested interview with Witness T will allow him to properly prepare his case because he expects to elicit testimony from Witness T concerning a large number of speeches and interviews broadcast on the radio during the events in Rwanda in April-July 1994. Nzirorera argues that the meeting will allow him to sufficiently prepare for an effective cross-examination, which facilitates the equality of arms, and will alleviate unnecessary consumption of trial time. He also wishes to go beyond the scope of cross-examination to learn of information that Witness T may have regarding additional speeches and public statements not already on the record or in Witness T's statements. As such, he believes that a subpoena should be granted. To support his Motion, Nzirorera relies on the Appeals Chamber decision in the *Halilovic* case.<sup>5</sup> The Prosecution opposes the Motion.

3. The Appeals Chamber has stated that witnesses to a crime are neither the property of the Prosecution or the Defence, such that both sides have an equal opportunity to interview them. If the witness refuses to grant a request for an interview, either party may apply to the Chamber for appropriate relief pursuant to Rule 54 of the Rules of Procedure and Evidence,<sup>6</sup> which provides a Judge or a Trial Chamber with the power to issue a subpoena "for the purposes of an investigation or for the preparation or conduct of the trial." This includes the authority to "require a prospective witness to attend at a nominated place and time in order to be interviewed by the Defence where that attendance is necessary for the preparation or conduct of the trial"<sup>7</sup> so that ultimately the trial is informed and fair.<sup>8</sup>

4. Subpoenas are not to be issued lightly and must therefore satisfy several requirements.<sup>9</sup> The requesting party must first demonstrate that it has made reasonable

<sup>1</sup> Motion for Issuance of Subpoena to Witness "T", filed by Joseph Nzirorera on 30 November 2005.

<sup>2</sup> Filed on 5 December 2005.

<sup>3</sup> Filed on 7 December 2005.

<sup>4</sup> *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-PT, Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T (TC) (Confidential), 14 September 2005.

<sup>5</sup> *Prosecutor v. Sefer Halilovic*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004.

<sup>6</sup> *Prosecutor v. Mile Mrksic*, Case No. IT-95-13/1-AR73, Decision on Defense Interlocutory Appeal on Communication with Potential Witnesses of the Opposite Party (AC), 30 July 2003, Section III(b).

<sup>7</sup> *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10.

<sup>8</sup> *Halilovic* Decision, para. 7.

<sup>9</sup> See, for example, *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on the Defence Request for a Subpoena for Witness SHB (TC), 7 February 2005, para. 3; *Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. 98-41-T, Decision on Request for Subpoena of

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attempts to obtain the voluntary cooperation of the witness and of other third parties who may be involved; that the witness' expected testimony is necessary and appropriate for the conduct of the proceedings; and that the prospective witness can materially assist its case.<sup>10</sup> Further considerations for the issuance of a subpoena include the reasonable likelihood that an order would produce the degree of cooperation needed for the Defence to interview the witness, and that the purpose of the interview goes beyond the scope of cross-examination.<sup>11</sup> Finally, as the Appeals Chamber stated in the *Halilovic* case, the use of subpoenas as a judicial power to compel must be balanced with the need to serve the overall interests of the criminal process.<sup>12</sup>

5. The Chamber notes that Nzirorera has attempted to obtain Witness T's cooperation through the appropriate channels, and that both parties agree on the importance of Witness T's testimony in this case. However, the Chamber is of the view that Nzirorera has not adequately demonstrated that such a meeting will materially assist his case, and the Chamber does not find that such a meeting is necessary and appropriate for the conduct of the proceedings. The Chamber observes that Witness T met voluntarily with Counsel for Nzirorera on two occasions before he agreed to testify for the Prosecution. The Chamber expects that such meetings would have provided sufficient opportunity to gather any information necessary to materially assist his case. Furthermore, lengthy witness statements and documents concerning Witness T have already been disclosed and the witness has already testified in other trials before this Tribunal.


6. Although the Chamber appreciates that Nzirorera has suggested ways to improve the efficiency of trial time, the Chamber does not agree that a subpoena, a tool which carries serious repercussions,<sup>13</sup> is required to achieve such efficiency.


7. Consequently, having evaluated the particular circumstances of the case, the Chamber is of the view that the overall interests of the criminal process would not be served by an order issuing a subpoena for Nzirorera to meet with Witness T.

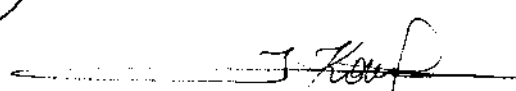
#### FOR THOSE REASONS THE CHAMBER


**DENIES** the Defence Motion in its entirety.

Arusha, 8 February 2006, done in English.

  
 Dennis C. M. Byron  
 Presiding

  
 Enle Francis Short  
 Judge

  
 Giberdao Gustave Kam  
 Judge

  
 Seal of the Tribunal

Major General Yaache and Cooperation of the Republic of Ghana (TC), 23 June 2004, para. 4; *Krstic* Decision, para. 17.

<sup>10</sup> *Id.*

<sup>11</sup> *Krstic* Decision, para. 17, *Halilovic* Decision, para. 14.

<sup>12</sup> *Halilovic* Decision, para. 10.

<sup>13</sup> *Mrksic* Decision, Section III(b); *Halilovic* Decision, paras. 6 and 10.