



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: 27 February 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**ORAL DECISION ON DEFENCE MOTION ON INADMISSIBILITY OF
EVIDENCE CONCERNING MEETINGS NOT PLEADED IN THE
INDICTMENT**

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

Transcript 27 February 2006, pp. 7-9.

“On 23rd February 2006, during the course of Witness UB's testimony, the Defence for Nzirorera raised an objection to the Prosecution leading evidence in relation to certain MRND meetings alleged to have taken place in Kibungo and Murambi in 1993.

Relying upon a previous oral ruling of this Chamber, Mr. Robinson objected to the admission of the witness's testimony about the meetings on the basis that they were not contained in the indictment or in the pre-trial brief. He submitted that the meetings constituted material facts which must be pleaded in the indictment. Since they were not, the testimony of the witnesses in relation to those meetings should be excluded.

Mr. Morley, for the Prosecution, opposed the objection, distinguishing the Chamber's previous oral ruling and also submitting that the Defence had given prior notice to the fact that the witness would testify to the meetings in question. He referred the Chamber to the relevant disclosures outlining the substance of the evidence sought to be led in relation to each meeting. The Chamber now delivers its ruling on the issue.

Pursuant to Rule 89(C) of the rules, the Trial Chamber may admit any relevant evidence which it deems to have probative value. Although not specifically provided for 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.

The Chamber notes that the failure to specifically plead certain allegations in the indictment does not necessarily render the evidence inadmissible. The Trial Chamber has the discretion under Rule 89(C) to admit any evidence which it deems to have probative value, to the extent that it be relevant to the proof of other allegations specifically pleaded in the indictment.

Now, the Kibungo meeting: In the Nyiramasuhuko Appeals Chamber decision 2nd July 2004, the Appeals Chamber said that for an indictment to be pleaded with sufficient particularity, it must set out the material facts of the Prosecution case with enough detail to inform the Defendant[^] clearly of the charges against him so that he may prepare his defence. It also said that the required degree of specificity would depend very much on the facts of the case and the nature of the alleged criminal conduct.

In the instant case, the Chamber has reviewed the indictment and the anticipated testimony of Witness UB, notably, the Prosecution's reference to K-numbers K0342146 and K0342147. The Chamber is of the view that in relation to the evidence of the meeting in Kibungo, general allegations contained in the indictment, notably at paragraphs 24 to 26 inclusive, concerning MRND meetings and Ngirumpatse's alleged presence at such meetings, in conjunction with the notice of the facts contained in the

witness statements disclosed to the Defence, in paragraph 12 of K0342146 renders the evidence admissible in its entirety.

With regard to the Murambi meeting, with respect to the anticipated testimony of Witness UB concerning the rally in Murambi *commune*, the Chamber has reviewed the relevant paragraphs of the witness's statement in the context of the indictment. The Chamber finds that evidence of the fact of the meeting having taken place and of Mathieu Ngirumpatse's presence as an alleged person at the rally may be led by the Prosecution. Again, the general allegations in the indictment as well as the notice contained in the witness statement are sufficient for evidence of such a nature to be led. However, the Chamber finds that the relevant statements concerning the naming at the meeting of persons married to Tutsi women and the fact of them having been killed by the *Interahamwe* subsequent to that meeting should have been specifically pleaded as material fact in the indictment.

The Chamber notes that the Prosecution did not refer to any part of the pre-trial brief where this allegation was made. In the circumstances, the Chamber considers the prejudicial effect of such evidence would highly outweigh its probative value. Consequently, the evidence is inadmissible.

The Chamber, therefore, upholds the Defence objection in part.”