



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: 9 March 2006

THE PROSECUTOR

v.

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**ORAL DECISION ON THE MOTION FOR INSPECTION OF NON-RULE 68
MATERIAL**

Office of the Prosecutor:

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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

See transcripts E: p. 16-19 (original language) F: p.18-22

MR. PRESIDENT:

Now, Mr. Robinson, we have a decision, the oral decision which we would like to deliver now.

This is the oral decision on the motion for inspection of non-Rule 68 material. During the oral hearing of 16th February 2005, in response to Nzirorera's request to stay the proceedings until certain materials had been disclosed pursuant to Rules 66 and 68. The Prosecution admitted to having statements from the following individuals: Eugène Mbrushimana, Jacques Rusirare, Jean Berchmans Imananibisheke, aka Sukari, Celestin Sezibera, Djuma Babizunturo, Grègoire Niyimanzi, Pierre Celestin Mbomankira.

I think I should spell these names. Eugène, E-U-G-È-N-E; Mbrushimana, M-B-R-U S H-I-M-A-N-A; Jacques Rusirare, J-A-C-Q-U-E S, R-U-S-I-R-A-R-E; Jean Berchmans Imananibisheke, J-E-A-N, B-E-R-C-H-M-A-N S, I-M-A-N-A-N-I-B-I S H-E-K-A, also known as, I suppose, AKA, Sukari, S-U-K-A-R-I; Celestin Sezibera, C-È-L-E-S-T-I-N, S-E-Z-I-B-E-R-E -- B-E-R-A, "A" for apple.

Djuma Babizunturo, D-J-U-M-A, B-A-B-I-Z-U-N-T-U-R-O; Grègoire Niyimanzi, G-R-È-G-O-I-R-E, N-Y -- N-I-Y-I-M-A-N-Z-I.

[...]

Now, the -- I have to complete the spelling of one name and it's P-I-E-R-R-E -- P-I-E-R-R-E,

C-È-L-E S T-I-N, M-B-O-M-A-N-K-I-R-A.

Now I continue with our ruling. In its oral decision denying the stay of proceedings, the Chamber found that the Defence had not sufficient -- had not submitted sufficient evidence to prove the exculpatory nature of those statements, pursuant to Rule 68. Nzirorera now requests to inspect all of the information in the possession of the Prosecution that was received from these seven individuals, pursuant to Rule 66(B).

To prove the materiality of the statements, he refers to other witnesses' statement or testimony. First, he refers to Witness Mbomankira's testimony, where the witness named Mbrushimana as a member of the *Interahamwe* national committee; Rusirare, as a member of the MRND *préfectoral* committee for Kigali; and Imananibisheke as a person who attended the MRND meetings and a composer of songs sung at MRND meetings calling for extermination of Tutsi. He insists that the statements the Prosecution has from these three individuals is material to the case because they may be related to the activity and acknowledge of the MRND and the *Interahamwe*.

The second refers to Witnesses GFA and GBU statements where Mbomankira is alleged to be a member of the *Interahamwe* committee -- of the *Interahamwe* in Mukindo -- Mukingo *commune*.

Third, he refers to Witness UB's testimony, where Sezibera, Babizunturo, and Niyimanzi,

are alleged to have attended Kigali *préfecture* meetings and received weapons from the ministry of defence in April 1994. Witness UB specifically named Sezibera, Babizunturo as having attended the meeting on 10th April 1994, and confirms Sezibera and Niyimanzi as having attended a meeting on 30th April 1994 in the presence of the Accused, whilst the Defence denies Nzirorera's attendance or the existence of the meeting.

During the hearing of 21st February 2006, the Prosecution orally responded to the motion. It opposed the motion on a point of principle, that the interpretation of Rule 66(B) should not be as wide as the Defence pretends. Consequently, the Prosecution argued that the Rule 66(B) must be read in the context of Rule 66(A), and so the material sought must support the indictment, be the Accused statements or statements of witnesses the Prosecution intends to call.

In the present case, the Prosecution notes that the material for which inspection is requested do not fall under any of those three categories determined in Rule 66(A). In support of his argument, the Prosecution relies on a 2005 Bagosora decision. Further, the Prosecution submitted that the Defence has not made a *prima facie* showing to the materiality of the evidence required by Rule 66(B). In any case, the Prosecution submitted that the material in its possession is available for review by the Chamber, sitting in camera, to assess its materiality, if necessary.

The Chamber disagrees with the interpretation provided by the Prosecution arguing that Rule 66(B) should be read in the context of Rule 66(A). These are independent sub-rules, indicated by the disjunctive character of Rule 66(B), and the only relevant criteria to the present case is that the documents requested for inspection are material to the preparation of the Defence, because the Prosecution does not intend to use the documents in this trial.

The Chamber considers that it is the Defence's obligation to prove that the statements are material to its preparation. Among the seven persons identified by the Defence, the Prosecution corrected itself from its earlier submission and now claims that he does not have any documents regarding Mbrushimana. The motion is, therefore, denied with regards to Mbrushimana.

Having considered the motion, the Chamber is of the view that there was not sufficient information in it to determine the material -- the materiality of the statements for which inspection is requested. However, having heard the testimony of Witness UB on the presence of Sezibera, Babizunturo and Niyimanzi, and -- meetings which the Accused deny took place or having attended, the Chamber finds that their statements are material to the preparation of the Defence. Consequently, the Chamber find that there is no need for it to review the information in camera, and denies the Prosecution considering the request.

In conclusion, the Chamber hereby orders the inspection of the statement in the possession of the Prosecution provided by Celestine Sezibera, Djuma Babizunturo, and Grègoire Niyimanzi, and denies the remainder of the motion.

