



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: 24 May 2006

THE PROSECUTOR

v.

Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**ORAL DECISION RELATING TO THE LATE DISCLOSURE REGARDING
WITNESS T**

Office of the Prosecutor:

Don Webster
Gregory Lombardi
Gilles Lahaie
Alayne Frankson-Wallace
Iain Morley
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

See transcripts E: p. 35-36(original language)

F: p. 41-42

MR. PRESIDENT:

Good afternoon, everyone. We are sorry we are so late, but before we commence, there's the oral decision I'd like to give relating to the late disclosure regarding Witness T.

This morning the Prosecution disclosed to the Defence a 20-page statement of Witness T in French. Although Prosecution counsel stated that he previously believed that this statement was disclosed, he admitted that it was not actually disclosed and that the Defence had only received this information for the first time. Prosecution counsel also admitted to not being able to locate four prior statements of Witness T, as noted by the Defence. Prosecution counsel assured that he would be able to locate the statements within the next day.

In response to the admitted disclosure violation, counsel for Nzirorera, who is scheduled to commence the cross-examination of Witness T this week, requested additional time to read, translate, digest, and discuss the statement with the Accused. In the interests of justice and for the fairness of the proceedings, the Chamber is of the view that it is appropriate to adjourn the proceedings in this case for tomorrow, Thursday, to grant the Defence additional time to prepare the cross-examination of Witness T in light of this newest disclosure, and reconvene for Witness T's testimony on Friday.

The Chamber is further seriously concerned by the Prosecution's management of its case with respect to the interests of justice and the rights of the Accused. Rule 46(A) of the Rules of Procedure and Evidence provides that a Chamber may, after a warning, impose sanctions against counsel if, in its opinion, his conduct remains offensive or abusive or obstructs the proceedings or is otherwise contrary to the interests of justice. In the present case, on several occasions the Chamber has voiced concerns regarding the Prosecution's disclosure obligations and its effect on the administration of justice in this trial. In particular, in the oral decision on the stay of proceedings of 16th February 2006, the Chamber strongly recommended that the Prosecution improve the management of disclosure in its case after it cited difficulties in accessing its database as the reason for failing to disclose Rule 68 material.

The Defence has asked for disclosure concerning Witness T on several occasions. The request was renewed during this trial session. The Prosecution reiterated that the disclosure was complete. Now, in the middle of the examination-in-chief of Witness T by video link, in a strict time schedule, the Prosecution states that, upon further investigation, it realised that disclosure was not, in fact, complete.

The Prosecution should have been diligent in each of the prior requests to ensure that its obligation to disclose as mandated by the rules was properly discharged. This behaviour, in the context of this case where the Chamber noted on several occasions the Prosecution's lack of diligence in disclosure matters, is completely unacceptable. This obstructs the proceedings and is contrary to the interests of justice.

Accordingly, the Chamber now imposes a warning pursuant to Rule 46(A) so that, if this behaviour continues, the Chamber will have the option to impose sanctions.