



UNITED NATIONS
NATIONS UNIES

1002-98-44-T
31-5-2006
(26882-26881)
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

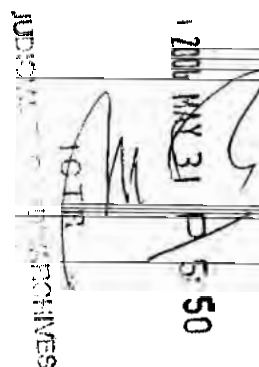
Date: 31 May 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T



INTERIM ORDER ON DEFENCE MOTION FOR SUBPOENA TO MEET WITH DEFENCE WITNESS NZ1

Office of the Prosecutor:

Don Webster
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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





1. On 23 January 2006, Nzirorera moved, pursuant to Article 28 of the Statute of the Tribunal and Rule 54 of the Rules of Procedure and Evidence, for the Chamber to issue a subpoena to Defence Witness NZ1¹ to meet with Counsel for the Accused and to the State² where he is located to cooperate in facilitating such a meeting. Nzirorera stated that the witness refuses to meet with him and that the witness had been contacted by the Prosecution in the past.
2. The Appeals Chamber in *Krstic* stated that where a prospective witness had been previously uncooperative with the defence, issuing a subpoena would only occur if the Chamber considered that it was reasonably likely that there will be cooperation if such an order were made.³ However that Chamber also stated that such a determination may not be safely made by the Defence alone, and proposed some alternative suggestions such as requesting the assistance of the Prosecution or ordering a subpoena for the witness to appear before the Trial Chamber to discuss the importance of his cooperation to assist in producing a just result in the trial and that he will be afforded protection by the Tribunal if required.⁴
3. Due to the particular circumstances of this case, and the alleged position of the witness during the events in Rwanda in 1994, the Chamber finds it necessary to have an alternative method to make the determination of the witness' willingness to participate in this case before it decides the Motion. In accordance with Rule 33 of the Rules, the Chamber is of the view that the Registry may assist in that order.

FOR THOSE REASONS, THE CHAMBER

I. REQUESTS the Registry to make its best efforts to contact the witness and convey to him the Chamber's desire for his cooperation in this case and that if required, protective measures can be afforded to him. A report on these efforts should be made to the Chamber as soon as possible, but no later than 15 June 2006.

II. REQUESTS the Government of a certain State to cooperate in facilitating this contact.

Arusha, 31 May 2006, done in English.

 Dennis C. M. Byron Presiding	 Emile Francis Short Judge	 Gberdao Gustave Kam Judge
 [Seal of the Tribunal]		

¹ See the attached Confidential Annex for the details concerning Witness DNZ1.

² See the attached Confidential Annex for the name of the State.

³ *Prosecutor v. Radislav Krstic*, Case No. IT-98-33, Decision on Application for Subpoenas (AC), 1 July 2003, para. 12

⁴ *Id.*