



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
10-10-2006
(27859 - 27857)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Duffy

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 10 October 2006

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**DECISION ON DEFENCE MOTION TO COMPEL BEST EFFORTS TO OBTAIN
AND DISCLOSE STATEMENTS AND TESTIMONY OF WITNESS UB**

Rule 98 of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
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 Niny Mayidika Ngimbi

INTRODUCTION

1. The trial in this case started on 19 September 2005. Prosecution Witness UB came to testify during the second trial session, which took place between 16 February and 15 March 2006.
2. In August 2006, the Defence for Nzirorera learnt that Witness UB gave two statements to Rwandan authorities, which allegedly contain information inconsistent with the witness' testimony in this case and were not disclosed to the Defence.¹ It also became aware for the first time that this witness testified in a Rwandan trial.² The Defence claims that despite a specific request, the Prosecution has declined to use its best efforts to obtain these documents because the witness has already completed his testimony.³ The Defence therefore requests the Chamber, pursuant to Rule 98 of the Rules of Procedure and Evidence, to order the Prosecution to use its best efforts to obtain and disclose the above-mentioned statements and Witness UB's testimony in the said case.

DELIBERATIONS

3. Rule 98 provides that a "Trial Chamber may *proprio motu* order either party to produce additional evidence. It may itself summon witnesses and order their attendance." This provision gives the Chamber discretion to make such an order to the Prosecution.⁴
4. The Chamber recalls that on 13 February 2006, following Joseph Nzirorera's application, the Government of Rwanda was requested to cooperate with the Tribunal in order to provide statements taken or received by the Rwandan authorities from and judgements rendered against 37 Prosecution witnesses, including Witness UB.⁵
5. Later, noting that none of the requested records had been provided, the Defence for Nzirorera filed a motion moving the Chamber to request the Tribunal's President to report the government of Rwanda to the United Nations Security Council for its failure to cooperate

¹ Joseph Nzirorera's Motion to Compel Best Efforts to Obtain and Disclose Statements and Testimony of Witness UB, filed on 13 September 2006: statements dated 12 May 1998 and 22 February 2000.

² *Ibidem*.

³ The Defence refers to correspondence between Counsel for Nzirorera and Prosecutor's Office.

⁴ See: *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Defence Motion for Additional Disclosure (TC), 1 September 2006, para. 5; see also: *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records (TC), 14 September 2005.

⁵ *Karemera et al.*, Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders (TC), 13 February 2006.

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with the Tribunal.⁶ On 11 July 2006, the Rwandan authorities responded to that request and communicated some material to the Chamber, none of which related to Witness UB.⁷ In its Decision of 2 October 2006, the Chamber observed that the Rwandan authorities cooperated with the Tribunal by providing some of the documents requested, and denied the Defence's application.⁸ The Chamber further requested the Rwandan authorities to explain as soon as possible how they complied with the Chamber's Decision of 13 February 2006, and, where appropriate, to provide the reasons why some material sought was not disclosed.

6. In the light of these circumstances, the Chamber does not see why it should exercise its discretion to order the Prosecution to obtain documents, which it has already requested from the Rwandan authorities in a prior Decision. The Chamber expects the Defence not to file repetitive motions seeking the same relief as has been done in this instance.⁹

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 10 October 2006, done in English.



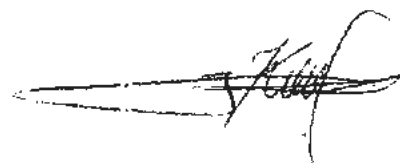
Dennis C. M. Byron

Presiding Judge



Emile Francis Short

Judge



Gberdao Gustave Kam

Judge



⁶ Motion to Report Government of Rwanda to United Nations Security Council, filed on 22 May 2006.

⁷ See Registrar's filing on 19 July 2006.

⁸ *Karemera et al.*, Decision on Defence Motion to Report Government of Rwanda to United Nations Security Council (TC), 2 October 2006, paras. 5 and 6.

⁹ See Rule 73(F) of the Rules of Procedure and Evidence.