



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
6-12-2006
(28130 - 28125)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 6 December 2006

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THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON PROSECUTOR'S MOTION TO ADMIT PRIOR SWORN TRIAL
TESTIMONY OF THE ACCUSED PERSONS**

Rule 89 of the Rules of Procedure and Evidence

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

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INTRODUCTION

1. The proceedings in the instant case commenced on 19 September 2005. The Prosecution now moves the Chamber to admit, pursuant to Rule 89 of the Rules of Procedure and Evidence, trial transcripts and accompanying exhibits from the sworn testimonies of Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera in the *Bagosora et al.* case.¹ The Prosecution explains that it has sought on several occasions to narrow the issues to be litigated in this trial by requesting admissions from the Accused of facts not in dispute, including admission of authenticity of certain documents that they have authored. It contends that certain admissions by the Accused during their testimony will conclusively address factual matters in this case that would otherwise require the testimony of additional witnesses, for example, obviating the need for evidence from a hand-writing analyst to address matters of authenticity of documents that are apparently non-contentious issues for the Accused in light of their testimony in the *Bagosora* trial.

2. None of the Accused objects to the admission of the transcript of their prior testimony on the *Bagosora et al.* case.² However, Mathieu Ngirumpatse requests that the Chamber does not admit the exhibits tendered during the testimony of his co-Accused, and Edouard Karemera opposes the admission of the exhibits entered during his own testimony. They submit that these exhibits were subject to various objections and consequently request the admission of these exhibits to be fully discussed in their trial before this Chamber. These objections are supported by Joseph Nzirorera

3. On 15 September 2006, following the Chamber's order,³ the Registrar served certified copies of the trial transcripts and accompanying exhibits sought for admission upon the Chamber and the Parties.

¹ See Prosecutor's Motion to Admit Prior Sworn Trial Testimony of the Accused under Rule 89(C), filed on 5 September 2006. Mathieu Ngirumpatse testified on 5 and 6 July 2005; Joseph Nzirorera on 16 March and 12 June 2006; and Edouard Karemera on 16 June 2006.

² Joseph Nzirorera, Edouard Karemera and Mathieu Ngirumpatse respectively filed their Responses on 8 September 2006, 29 September 2006 and 2 October 2006.

³ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), *Décision accordant une prorogation de délai de réponse à deux requêtes du Procureur et ordonnant la communication de documents certifiés conformes* (TC), 13 September 2006.

DELIBERATIONS

4. According to Rule 89 of the Rules, the Chamber is not bound by national rules of evidence and may, in cases not otherwise provided for in the Rules, apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.⁴ The Chamber also has a broad discretion under Rule 89 (C) of the Rules to admit any relevant evidence which it deems to have probative value. Trial Chambers of both *ad hoc* Tribunals have held that documents need not be recognized by a witness in order to have probative value.⁵ While a Chamber always retains the competence under Rule 89(D) to request verification of the authenticity of evidence obtained out of court, only the beginning of proof that evidence is reliable, namely, that sufficient indicia of reliability have been established, is required for evidence to be admissible.⁶ As the Appeals Chamber has also repeatedly emphasized, “[a]dmissibility of evidence should not be confused with the assessment of weight to be accorded by the Chamber to that evidence at a later stage”.⁷

5. The Chamber notes that at the beginning of the testimony of each Accused, the Presiding Judge in the *Bagosora et al.* case reminded them that, according to Rule 90 (E) of the Rules, “[they] may refuse to make any statement which might tend to incriminate [them]”.⁸ The Accused persons did rely upon this Rule to refuse to answer certain questions. The Counsel for each of the Accused were also present during the proceedings and allowed to intervene when appropriate.

⁴ Rules of Procedure and Evidence, Rules 89(A) and (B).

⁵ *Karemera et al.*, Decision on Admission of UNAMIR Documents (TC), 21 November 2006, para. 5; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C) (TC), 25 May 2006, para. 4; *Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, Judgement (TC), 3 March 2000, para. 35; *Prosecutor v. Kvočka et al.*, Decision on Zoran Zigic’s Motion For Rescinding Confidentiality of Schedules Attached to the Indictment Decision On Exhibits (TC), 19 July 2001; *Prosecutor v. Prlic et al.*, IT-04-74-PT, Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings (TC), 28 April 2006; *Prosecutor v. Prlic et al.*, IT-04-74-T, Decision on Admission of Evidence (TC), 13 July 2006.

⁶ *Prosecutor v. Nyiramasuhuko*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko’s Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7; *Prosecutor v. Georges Anderson Rutaganda*, Case No. ICTR-96-3-A, Judgement (AC), para. 33; *Prosecutor v. Delalic and Delic*, Decision on Application of Defendant Zejnir Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998.

⁷ *Ntahobali and Nyiramasuhuko*, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the “Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible” (AC), 2 July 2004, para. 15.

⁸ T. 5 July 2005, p. 49 (Ngirumpatse); T. 16 March 2006, p. 60 (Nzirorera); T. 16 June 2006, p. 2 (Karemera).

6. The authenticity and authorship of the exhibits were not disputed by the Accused persons and, except for one of them, were not subject to any objection from the Accused or their Counsel attending the proceedings. Exhibit P. 396, which is a page extracted from handwritten notes taken by Edouard Karemera during a Council of Ministers held on 17 June 1994, was the subject to an objection from Edouard Karemera supported by his Counsel. The Accused did not dispute that he was the author of the notes but submitted that the document touched upon the charges against him.⁹ Relying upon his right to remain silent as set forth in Rule 90(E) of the Rules, he refused to discuss the document in its entirety, but agreed to comment on one page which was the subject of the examination-in-chief by the Defence for Nsengiuyuva and was subsequently admitted by the *Bagosora* Trial Chamber.¹⁰

7. After reviewing the transcripts and exhibits, the Chamber is satisfied that the sworn testimony of each Accused in the *Bagosora et al.* trial and the accompanying exhibits concern matters relevant to the case and which have probative value. Exhibits were an integral part of the testimony of the Accused persons since during their respective testimonies, they commented on some documents which were already admitted as exhibits or were subsequently admitted.

8. The Chamber does not consider that the admission of the transcripts and the accompanying exhibits will infringe upon the rights of the Accused. Each of them has acknowledged the authorship of the documents shown to them. The admission into evidence does not in any way constitute a binding determination as to the authenticity or trustworthiness of the documents and the weight to be attached to the evidence shall be determined at a later stage and after considering the evidence as a whole. Furthermore, as explained by the Prosecution, the admission is sought to prove authorship of the documents which the Prosecution had always intended to offer as part of its case. The Accused will also be able to fully discuss these documents during their trial if necessary.

FOR THE ABOVE REASONS, THE CHAMBER

I. GRANTS the Prosecution Motion; and

⁹ T. 16 June 2006, pp. 20-21 and 24.

¹⁰ T. 16 June 2006, p. 29.

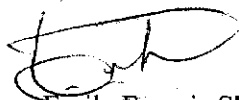
II **REQUESTS** the Registrar to assign an exhibit number in the instant case to the certified copies of the transcripts of the sworn testimony given by Edouard Karemera, Mathieu Ndirumpates and Joseph Nzirorera in the *Bagosora et al.* case as well as to the exhibits accompanying these testimonies which are described hereinafter.

Arusha, 6 December 2006, done in English.



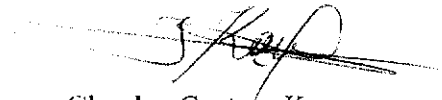
Dennis C. M. Byron

Presiding Judge



Emile Francis Short

Judge



Ciberdao Gustave Kam

Judge



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Exhibits accompanying Karemera's testimony:

- D. NS 186:** Personal information sheet of Edouard Karemera.
- D. NS 187 (A and B; Document K 0366114):** Telegram written by Kayishema on 12 June 1994 on a "ratissage" operation which would last four days from the 15 to the 18 June 1994.
- P. 394 (A and B; Document K0285041 and K0286366):** Letter dated 20 June 1994 from Edouard Karemera, as Minister of Interior, sent to Clément Kayishema, *Préfet* of Kibuye.
- P. 395 (A and B; Document K0195166):** Message dated 2 June 1994 from *Préfet* of Kibuye, Clément Kayishema, to Minister of Interior and Communal Development, Edouard Karemera.
- P. 396:** Handwritten notes taken by Edouard Karemera during council of Ministers held on 17 June 1994 (only page KA010403E).
- P. 397(A, B and C; Document K0272220):** Letter dated 24 June 1994 written in Kinyarwanda by *Bourgmestre* Ignace Bagilishema to *Préfet* of Kibuye, Clément Kayishema.
- P. 50 (A and B):** Letter "Subject, mopping up operation in Kibuye", written by Edouard Karemera, as Minister of Interior, sent to Colonel Nsengiyumva.
- P. 48 (A and B):** Letter written by Edouard Karemera to all *préfets* on the implementation of the Prime Minister's directive on the self organisation of civilian defence.
- P. 49 (A and B):** Letter from Edouard Karemera directed to the *préfets* of the different *préfecture* of Rwanda on the implementation of the Prime Minister's directive regarding civilian self defence.

Exhibits accompanying Ngirumpatse's testimony:

- D. B 177:** Personal details of Mathieu Ngirumpatse.
- D. B 178:** *Protocole d'entente entre les partis politiques appelés à participer au gouvernement de transition*, dated 7 April 1992.
- D. B 179:** *Protocole additionnel au protocole d'entente entre les partis politiques qui participent au Gouvernement de transition*, dated 13 April 1993.
- D. B 180:** *Protocole additionnel au protocole d'entente entre les partis politiques appelés à participer au Gouvernement de transition*, dated 8 April 1994.
- P. 352:** *Protocole d'entente*, dated 16 July 1993.
- P. 353:** Map of Kigali.

Exhibits accompanying Nzirorera's testimony:

- D. NS 161:** Personal details of Joseph Nzirorera.
- D. NS 162 (A and B):** *Curriculum Vitae* of Joseph Nzirorera.
- D. B321:** Copies of Nzirorera's passport.
- D. B 271:** Affidavit signed by Nzirorera to the attention of Bagosora.