

ICTR-98-44-T  
29-12-2006  
(28249-28246)

28249  
mm



UNITED NATIONS  
NATIONS UNIES

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:** 29 December 2006

THE PROSECUTOR

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

*Case No. ICTR-98-44-T*

JUDICIAL RECORDS/ARCHIVES  
URICTR  
RECEIVED

2006 DEC 29 1 P 1:32

DECISION ON MOTION FOR DISCLOSURE OF LETTER FROM PROSECUTION  
WITNESS BTH TO THE  
WITNESS AND VICTIM SUPPORT SECTION

*Rules 33(B) and 54 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Alayne Frankson-Wallace  
Iain Morley  
Sa'dou 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 Nimy Mayidika Ngimbi

## INTRODUCTION

1. During the testimony of Prosecution Witness BTH, on 20 June 2006, the witness alleged that he had been intimidated by the Defence for Joseph Nzirorera. He also stated that he was offered a sum of money by a relative of the Accused if he declined to testify for the Prosecution and/or agreed to testify on behalf of the Defence. The witness testified that he subsequently informed an employee of the Witness and Victim Support Section ('WVSS'), Kigali, of this offer, and wrote a letter about the matter which was left in the possession of WVSS, Kigali. Immediately following this testimony, the Defence for Joseph Nzirorera made an Oral Motion before the Chamber for an order for the disclosure of the said letter.<sup>1</sup> As a result, the Presiding Judge asked the witness for the name of the employee who received the letter and the date that it was written. Being satisfied that the witness gave sufficient information to identify the letter, the Chamber denied the Defence application.<sup>2</sup>

2. In a Further Submission, the Defence for Nzirorera submits that the Chamber has not yet ruled upon its oral motion.<sup>3</sup> It contends that this Motion, however, is now moot because the WVSS employee and his supervisor told Lead Counsel for Nzirorera that they had no recollection of having received such a letter, and that no such letter is in Witness BTH's file. The Defence further advises that he asked each of these persons to sign a statement to this effect, but that they both declined to do so.

3. In a response filed on 26 October 2006, the Prosecution provides a different account of events, and submits that the Motion has not been rendered moot. The Prosecution submits that the Senior Trial Attorney spoke with the WVSS employee concerned and that he found the employee's account of events to be consistent with that of Witness BTH.<sup>4</sup> It requests the Chamber to order WVSS to provide a written memorandum clarifying its position, or alternatively, that the WVSS employees concerned be ordered to appear before the Chamber to provide an explanation of the relevant matters concerning the letter.

<sup>1</sup> T. 20 June 2006, p. 45 (closed session)

<sup>2</sup> T. 20 June 2006, p. 45: "Is that sufficient identifying information? I don't think we make the order that you requested at this stage, but the document has been satisfactorily identified."

<sup>3</sup> Further Submission Concerning Motion for Disclosure of Witness BTH Letter to WVSS, filed on 17 October 2006.

<sup>4</sup> See Prosecution Response, para. 1: "a letter was written by BTH providing details of an attempt of the Nzirorera defense team to influence his testimony; BTH gave the letter to the WVSS witness support assistant; that WVSS witness support assistant forwarded the letter to his immediate supervis[or] to be filed in the WVSS archive."

## DISCUSSION

4. Although the Chamber has already decided to deny the Defence application for an order to disclose a letter given by Witness BTH to a WVSS employee, the Chamber has an inherent power to reconsider its decisions in view of new circumstances that were not known at the time it made its original Decision.<sup>5</sup>

5. In the present case, the Parties' subsequent filings concerning the existence or non-existence of the letter raise new circumstances that might be relevant to the credibility of the witness and show that the Defence may have difficulties in obtaining the document sought. The Chamber is also of the view that this issue could be addressed without calling a WVSS representative to testify orally as suggested by the Defence.<sup>6</sup>

6. Since the Prosecution is not in possession of the letter and the Registrar, through WVSS, indicates to have relevant information and have no objection in complying with any directive of the Trial Chamber concerning this issue,<sup>7</sup> the Chamber finds appropriate to request, pursuant to Rules 33(B) and 54 of the Rules of Procedure and Evidence,<sup>8</sup> the assistance of the Registrar.

7. Moreover, the Chamber is of the view that the correspondence attached to the Prosecutor's Response filed on 26 October 2006 contains information that could identify the witness and should therefore be re-filed as confidential in order to preserve the security of the witness.

<sup>5</sup> *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera* ("Karemera et al.") Case No. ICTR-98-44-PT, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005, para. 8; *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure (TC), 31 October 2005, para. 3; *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness (TC), 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

<sup>6</sup> Further Submission Concerning Motion for Disclosure of Witness BTH Letter to WVSS, filed on 17 October 2006.

<sup>7</sup> Filings made on 30 October and 2 November 2006.

<sup>8</sup> Rule 33(B) provides:

The Registrar, in the execution of his functions, may make oral or written representations to Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions, including that of implementing judicial decisions, with notice to the parties where necessary.


Rule 54 provides:


At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.


**FOR THOSE REASONS, THE CHAMBER**

- I. REQUESTS** the Registrar to provide, confidentially and as soon as practicable, the Chamber and the Parties with the letter given by Witness BTH to a WVSS employee named Janvier Bayingana on or about 4 January 2004, as well as any supporting material and statements from the relevant WVSS employees who could be relevant to the issue at stake;
- II. ORDERS** that Annex to the Prosecutor's Response to Joseph Nzirorera's Further Submission Concerning Motion for Disclosure of BTH Letter to WVSS, filed on 26 October 2006, be re-classified as confidential to the public.

Arusha, 29 December 2006, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
With the consent and on  
behalf of  
Emile Francis Short  
Judge  
(absent at the time of the  
signature)

  
With the consent and on  
behalf of  
Gberdao Gustave Kam  
Judge  
(absent at the time of the  
signature)

[Seal of the Tribunal]

