

ICTR-98-44-T
8-5-2007
(28794-28791)

28794
-HM



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
Gberdao Gustave Kam
sitting pursuant to Rule 15 bis of the Rules of Procedure and Evidence

Registrar: Adama Dieng

Date: 8 May 2007

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T**

JUDICIAL RECORDS ARCHIVES
RECEIVED
2007 MAY 08 P 12: 29

**DECISION SUPPLEMENTING THE CHAMBER'S PRIOR ORDER FOR THE
TRANSFER OF PROSECUTION WITNESSES FROM RWANDA**

Rules 15 bis (F) and 90 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
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

JSB

1. The trial in this case started on 19 September 2005 before Trial Chamber III composed of Judges Dennis C. M. Byron, presiding, Emile Francis Short and Gberdao Gustave Kam. The fourth trial session concluded on 13 December 2006.
2. As a result of Judge Short's withdrawal from the case in January 2007, the remaining Judges decided on the continuation of the proceedings with a substitute judge.¹ On 20 April 2007, the Appeals Chamber affirmed this decision.²
3. On 2 May 2007, Judge Vagn Joensen was sworn in as new *ad litem* Judge at the Tribunal and, according to the letter of appointment of the United Nations Secretary General and at the request of the President of the Tribunal, he is assigned to the present case as substitute judge. According to Rule 15 *bis* (D) of the Rules of Procedure and Evidence, he can join the bench only after he has certified that he has familiarised himself with the record of the proceedings. While this familiarization process is currently ongoing, there is an urgent need to take some preparatory steps in order to organize the resumption of the trial scheduled for 11 June 2007.³ On 26 April 2007, on the basis of the authorization of the President of the Tribunal for the Trial Chamber, composed of Judges Byron and Kam, to conduct routine matters,⁴ it ruled on a Prosecutor's motion seeking the temporary transfer of Witnesses ANU, AWD, AWE and FH to the United Nations Detention Facility in Arusha under Rule 90 *bis* of the Rules of Procedure and Evidence.⁵

¹ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpase, Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Continuation of the Proceedings (TC), 6 March 2007.

² *Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals Pursuant to Rule 15 *bis* (D) (AC), 20 April 2007.

³ *Karemera et al.*, Scheduling Order for the Resumption of the Trial (TC), 2 May 2007.

⁴ See Rules of Procedure and Evidence, Rule 15 *bis* (F); and Interoffice Memorandum from the President to Judge Byron, filed on 13 March 2007.

⁵ *Karemera et al.*, Order for the Transfer of Prosecution Witnesses from Rwanda (TC), 26 April 2007. See Rule 90 *bis* of the Rules:

(A) Any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.

(B) The transfer order shall be issued by a Judge or Trial Chamber only after prior verification that the following conditions have been met:

- (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State. [...]

4. Although the Prosecution could not provide additional supporting material or information as to the availability of the witnesses, the Chamber granted the request for the temporary transfer of Witnesses AWD, AWE and FH to the UN Detention Facility in Arusha in order to ensure their availability for the forthcoming trial session.⁶ This, however, was subject to confirmation by the Rwandan authorities that these witnesses were not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that their transfer to Arusha would not prolong their detention in Rwanda.⁷

5. On 4 May 2007, the Prosecution filed additional material in support of its request, including a letter from the Prosecutor General of Rwanda indicating that the detained witnesses known by the pseudonyms AWD, AWE and FH were available for the period considered.⁸ The Chamber is therefore satisfied that the requirements set forth by Rule 90 *bis* of the Rules for the temporary transfer of these witnesses are indeed met.

6. In its Order of 26 April 2007, the Chamber also requested the Prosecution to clarify whether Witness ANU was currently detained and if not, why the witness should be detained at the UN Detention Facility of the Tribunal.⁹ The ruling on the temporary transfer of this witness was therefore reserved.

7. Following the Prosecution's supplemental filing of 7 May 2007, it has been confirmed that the witness known by the pseudonym ANU is no longer a detainee.¹⁰ There is therefore no reason to order the transfer of the witness to the UN Detention Facility in Arusha under Rule 90 *bis* of the Rules.

FOR THESE REASONS, the CHAMBER

I. CONFIRMS its prior Order of 26 April 2007 for the temporary transfer of detained witnesses known by the pseudonyms AWD, AWE and FH to the UN Detention facility in Arusha, at an appropriate time prior to their scheduled dates to testify during the period 28 May through 3 August 2007;

⁶ *Ibidem*.

⁷ *Ibid.*, para. 12.

⁸ Prosecutor's Supplemental Filing in support of its Renewed Request for Temporary Transfer of witnesses pursuant to Rule 90bis, filed confidential.

⁹ *Karemera et al.*, Order for the Transfer of Prosecution Witnesses from Rwanda (TC), 26 April 2007, para. 10.

¹⁰ See Letter from Prosecutor General of Rwanda dated 2 May 2007, attached to the Prosecutor's Supplemental Filing in support of its Renewed Request for Temporary Transfer of witnesses pursuant to Rule 90bis (filed confidential).

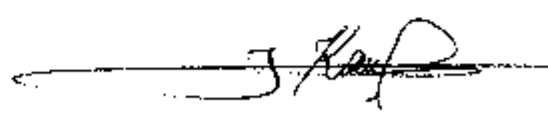
28791

II. DENIES the Prosecution request for a transfer order of the witness known by the pseudonym ANU.

Arusha, 8 May 2007, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

