



UNITED NATIONS
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

ICTR-98-44-T
21-S-2007
(28868 - 28865)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

28868
Hump

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: 21 May 2007

THE PROSECUTOR

v.

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

JUDICIAL NOTICE
FILED

2007 MAY 21 A 10:140

Don Webster

ORDER FOR THE TRANSFER OF PROSECUTION WITNESSES FROM RWANDA

Rule 90bis 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 Niny Mayidika Ngimbi

Handwritten signature

28867

INTRODUCTION

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. Judge Vagn Joensen was appointed by the Secretary-General as an *ad litem* Judge to form part of the bench in the present case.³ According to Rule 15 *bis* (D) of the Rules of Procedure and Evidence ("Rules"), he can join the bench *only after* he has certified that he has familiarised himself with the record of the proceedings.

4. On 16 May 2007, the Prosecution filed a request seeking an order for the temporary transfer of two witnesses it intends to call during the next trial session scheduled to start on 11 June 2007.⁴

5. Since the President of the Tribunal authorized the Trial Chamber, composed of Judges Byron and Kam, to conduct routine matters in the absence of the substitute judge⁵ and considering the urgent need to take some preparatory steps in view of the resumption of the trial, a decision on the transfer of some Prosecution witnesses may be delivered at this stage.

DISCUSSION

5. Pursuant to Rule 90 *bis* (A) of the Rules, "[a]ny detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Union of the Tribunal, conditional on his return within the period decided by the Tribunal". Rule 90 *bis* (B) requires prior verification of two conditions for such an order:

- (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;

¹ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, 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 Judge Joensen was sworn in on 2 May 2007.

⁴ Prosecutor's Request for temporary Transfer of Witnesses AXA and ALZ pursuant to Rule 90bis

⁵ See Rules of Procedure and Evidence, Rule 15 *bis* (F); and Interoffice Memorandum from the President to Judge Byron, filed on 13 March 2007.

[Handwritten signature]

28866

- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

6. In the present Motion, the Prosecution submits that such requirements are satisfied as the presence of Witnesses AXA and ALZ is not required for any criminal proceedings in Rwanda during the period when they will be expected to testify before this Trial Chamber, from 16 July through 3 August 2007, and that their transfer to Arusha will not extend their detention in Rwanda.

7. The Prosecution also indicates that it has addressed a letter to the Rwandan Minister of Justice requesting confirmation of the availability of the said witnesses. It undertakes to file the said response of the Minister of Justice once it is received.

8. In order to minimize any delay in the resumption of the trial, the Chamber considers that a transfer order of Witnesses AXA and ALZ is warranted so that the Witnesses and Victims Support Section (WVSS) may start consulting with the relevant Rwandan authorities in order to ensure their presence for the forthcoming trial session. This, however, will be subject to confirmation by the Rwandan authorities that these witnesses are not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that their transfer to Arusha will not prolong their detention in Rwanda.

FOR THESE REASONS, the CHAMBER

I. GRANTS the Prosecution Motion as follows:

II. REQUESTS, pursuant to Rule 90 *bis* of the Rules, the Registrar to make the necessary arrangements in view of the temporary transfer of detained witnesses known by the pseudonyms AXA and ALZ to the UNDF facility in Arusha, at an appropriate time prior to their scheduled dates to testify during the period from 16 July through 3 August 2007, after having verified, in coordination with the Prosecutor and the relevant Rwandan authorities, that these witnesses are not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that their transfer to Arusha will not prolong their detention in Rwanda;

III. ORDERS the Prosecution to provide the Chamber and the Defence, as soon as possible, with any additional supporting material or information as to the availability of the witnesses in accordance with the requirements set out by Rule 90 *bis* (B) of the Rules;




IV. REQUESTS the Registrar to ensure that the return travel of the witnesses is facilitated as soon as practically possible for each witness after their testimony has ended;

V. REQUESTS the Governments of the Republic of Rwanda and the United-Republic of Tanzania to cooperate with the Registrar in the implementation of this Order;


VI. REQUESTS the Registrar to cooperate with the authorities of the Governments of Rwanda and the United-Republic of Tanzania to ensure the proper conduct of the transfer and detention of the witnesses at the UNDF and to inform the Chamber of any changes in the conditions which may affect the length of the stay of these witnesses in Arusha.

Arusha, 21 May 2007 done in English.


Dennis C. M. Byron
Presiding Judge



{Seal of the Tribunal}


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