



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-44-T
11-7-2007
(29409 - 29407)

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OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 11 July 2007

THE PROSECUTOR

v.

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

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**DECISION ON DEFENCE MOTIONS TO EXCLUDE THE TESTIMONY OF
WITNESS QBG**

Rules 66 (A)(ii) and 73 of the Rules of Procedure and Evidence

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Peter Robinson and Patrick Nimy Mayidika Ngimbi

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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, Judge Vagn Joensen joined the bench in June 2007 as substitute judge.¹ The fifth trial session started on 12 June 2007. During this session, the Prosecution intends to call 16 witnesses, including Witness QBG.

3. In a Motion filed on 18 June 2007, Joseph Nzirorera, joined by Édouard Karemera, moves the Chamber to exclude the testimony of that witness due to late disclosure of witness' statements.² The Prosecution opposes the Defence request.³

DISCUSSION

4. Joseph Nzirorera, joined by Edouard Karemera, requests the Chamber to impose remedial and punitive measures as a remedy for the violation by the Prosecution of its obligations pursuant to Rule 66(A)(ii) of the Rules of Procedure and Evidence to disclose, 60 days before the commencement of the trial, a statement of Prosecution Witness QBG drafted in 1996.⁴ They assert that they have been greatly prejudiced by the repetitive violation by the Prosecution of its disclosure obligations since, rather than knowing the case against them before the start of trial, they have had to divert resources throughout the trial to react to new information. They therefore move the Chamber to exclude the testimony of Witness QBG, as the only effective remedy to the Prosecution's persistent violations of its obligations.

5. The Prosecution does not dispute that QBG's memorandum dated 31 January 1996 is a prior statement falling under its disclosure obligations and that it was disclosed late. It

¹ See: *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Continuation of the Proceedings (IC), 6 March 2007; *Karemera et al.*, Decision on Appeals Pursuant to Rule 15 bis (D), (AC) 20 April 2007. Judge Joensen was sworn in on 2 May 2007 and certified that he had familiarized himself with the record of the proceedings on 8 June 2007, see *Karemera et al.*, Certification of the Familiarisation with the Record of the Proceedings, 8 June 2007.

² Joseph Nzirorera's Notice of Violation of Rule 66(A)(ii) for Fidèle Uwizeye and Motion for Remedial and Punitive Measures, filed on 18 June 2007; *Soumission de Karemera pour Demander Réparation Suite à une ultime violation de l'article 66 induite par une divulgation tardive d'éléments de preuve en rapport avec le témoin QBG*, filed on 19 June 2007.

³ Prosecutor's Response to Nzirorera's and Karemera's Motion to Exclude QBG, filed on 19 June 2007.

⁴ Rules of Procedure and Evidence, Rule 66(A)(ii):

"The Prosecution shall disclose to the Defence:
[...]

(ii) No later than 60 days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial; [...]"

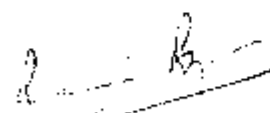
explains that the memorandum was only recently discovered due to renewed research efforts and was disclosed as soon as it was discovered.

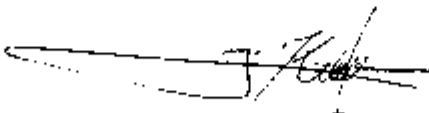

6. The Chamber notes that the information contained in the lately disclosed memorandum simply restates information, which has been for the most part available since 2002. Since many witness statements and other documents concerning the witness had already been disclosed in a timely manner, so that the Defence has been given information on the anticipated evidence of Witness QBG and issues affecting his credibility, the Chamber is satisfied that the Defence has had adequate time to conduct its investigations in order to prepare the cross-examination of Witness QBG.⁵ Moreover, the Defence will be able to confront Witness QBG with his memorandum during the cross-examination of the witness. Under these circumstances, the fair trial of the Accused persons was not compromised by the late disclosure of the witness statement. An exclusion of the anticipated testimony of Witness QBG is therefore not warranted.

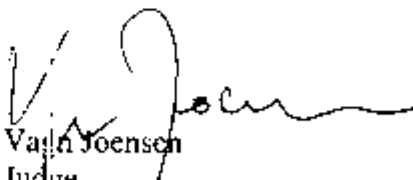
FOR THESE REASONS, THE CHAMBER

DENIES the Defence Motions to exclude the testimony of Prosecution Witness QBG.

Arusha, 1 July 2007, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge

[Seal of the Tribunal]


Vain Joensen
Judge

⁵ See: Prosecutor's Response to Nzirorera's and Karemera's Motion to Exclude QBG, filed on 19 June 2007, para.3.