

ICTR-98-44-T

6-9-2007

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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
Gherard Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 6 September 2007

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THE PROSECUTOR

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTIONS TO VACATE JUDICIAL
NOTICE OF SOME ADJUDICATED FACTS**

Rule 94 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 Sendzu

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

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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. On 11 December 2006, that Chamber issued its *Decision on Appeals Chamber Remand of Judicial Notice*¹ in which pursuant to Rule 94 (B) of the Rules on Evidence and Procedure ("Rules") it took judicial notice of a number of adjudicated facts from other judgements delivered by Trial Chambers in proceedings before the Tribunal.²
3. As a result of Judge Short's withdrawal from the case, Judge Vagn Joensen joined the bench in June 2007 as substitute judge for the continuation of the proceedings.³ The fifth trial session started on 12 June 2007.
4. On 9 July 2007, Joseph Nzirorera filed two separate Motions moving the Chamber to vacate judicial notice of adjudicated facts #105, 106 and 107 and #108 and 117 respectively of the Annex to the Decision of 11 December 2006 on the ground that these facts had been reversed on appeal of the judgments from which they had been taken.⁴ The Prosecution in its response left the matter to the discretion of the Trial Chamber.⁵

DISCUSSION

5. According to the established jurisprudence, a Chamber has the inherent power to reconsider its decisions when (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision, (ii) there has been a material change in circumstances since it made its original Decision, or (ii) there is reason to believe that its

¹ *Prosecutor v. Karemera et al.*, Decision on Appeals Chamber Remand of Judicial Notice (TC), 11 December 2006.

² See the Annex to this decision.

³ See: *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Continuation of the Proceedings (TC), 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.

⁴ Joseph Nzirorera's Motion to Vacate Judicial Notice of Adjudicated Facts #105, 106 and #107, filed on 9 July 2007 and Joseph Nzirorera's Motion to Vacate Judicial Notice of Adjudicated Facts #108 and #117, filed on 9 July 2007

⁵ Prosecution's Consolidated Response to Joseph Nzirorera's Motion to Vacate Judicial Notice of Adjudicated Facts 108 and 117 and Joseph Nzirorera's Motion to Vacate Judicial Notice of Adjudicated Facts 105, 106 and 107.

original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in injustice thereby warranting the exceptional remedy of reconsideration.⁶

6. Rule 94(B) of the Rules gives a Trial Chamber the power to take judicial notice, at the request of a party or *proprio motu*, of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the proceedings. Adjudicated facts have been defined in the jurisprudence as “facts which have been finally determined in proceedings before the Tribunal [and] [...] one upon which it has deliberated, and thereupon made a finding in proceedings that are final, in that no appeal has been instituted therefrom or if instituted, the facts have been upheld.”⁷

7. The Chamber notes, as the Prosecution has also pointed out, that the facts at issue were not reversed for credibility reasons but because they were material facts which should have been plead in the indictment. Nevertheless, the Chamber finds that these facts may not properly be termed “adjudicated facts” and that taking judicial notice of them would be an abuse of the Chamber’s power resulting in injustice.


⁶ See: *Karemera et al.*, Case No. ICTR-98-14-P1, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 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, 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, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).


⁷ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-30-1, Decision on Bicamumpaka’s Motion for Judicial Notice, 11 February 2004, par. 4-5; *Prosecutor v. Edoard Karemera, Mathieu Ndirumpatswe and Joseph Nzirorera*, Case No. ICTR-98-44-R94, Decision on Prosecution Motion for Judicial Notice (TC), 9 November 2005, par. 14.

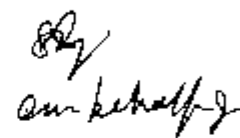
FOR THOSE REASONS, THE CHAMBER

- I. GRANTS** the Defence Motions to vacate judicial notice of adjudicated facts #105, #106, #107, #108 and #117; and
- II. ACCORDINGLY, AMENDS** its prior Decision of 11 December 2006.

Arusha, 6 September 2007, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



ANNEX TO THE DECISION ON JOSEPH NZIRORERA'S MOTIONS TO VACATE JUDICIAL NOTICE OF ADJUDICATED FACTS #105, #106, #107, #108, AND #117

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|------------|---|--------------------------|
| 105 | On the morning of 14 May, Niyitegeka and others, together with attackers, arrived at Muyira Hill and parked their vehicles at Kueyapa. | Niyitegeka, par. 205 |
| 106 | The attackers comprised civilians, soldiers, Interahamwe, gendarmes and communal policemen | Niyitegeka, par. 205. |
| 107 | They were carrying guns, spears, clubs, machetes and sharpened objects, and launched a large-scale attack against the Tutsi refugees at Muyira Hill. Niyitegeka was armed with a gun and shot at Tutsi refugees at Muyira Hill. | Niyitegeka, par. 205 |
| 108 | Sometime in mid-May 1994 in Muyira Hill, Gerard Ntakirutimana led armed attackers in an attack on Tutsi refugees, as a result of which many Tutsi were killed | Ntakirutimana, par. 635 |
| 117 | Elizaphan Ntakirutimana participated in a convoy of vehicles carrying armed attackers to Kabarwa Hill at the end of May 1994, and, later on that day, at neighbouring Gitwa Hill, he pointed out the whereabouts of Tutsi refugees to attackers who attacked the refugees | Ntakirutimana, par. 607. |