



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  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 03 December 2007

**THE PROSECUTOR**

v.

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

**ORAL DECISION ON THE REQUEST OF JOSEPH NZIRORERA AND  
MATHIEU NGIRUMPATSE FOR EXCLUSION OF MATERIAL FACT**

**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

*T. 03 December 2007, p1 (line 30) -2 (line 13):*

JUDGE JOENSEN:

Thank you, Mr. President. That decision is as follows:

During proceedings on the 20th of November 2007, Counsel for Nzirorera joined by Counsel for Ngirumpatse made an oral motion moving the Chamber to rule that evidence on Édouard Karemera's alleged participation in an MRND rally held in Kibuye in December 1993 elicited from prosecution Witness AXA during the cross-examination by Counsel for Karemera, and the Prosecutor's redirect examination, cannot be used as evidence against Joseph Nzirorera or Mathieu Ngirumpatse, be it in relation to the direct participation in a joint criminal enterprise, or in relation to any other kind of liability.

The Prosecutor did not make any submissions in this regard. The Chamber is now ready to deliver its oral decision on the motion. The Chamber recalls that it has consistently held that the participation of an accused in a rally is a material fact. The evidence of which if adduced by the Prosecutor, the accused must be put on notice by reference in the indictment, the Prosecutor's pretrial brief, or the witness's statements attached thereto.

It is not disputed that such notice has not been given. Bearing in mind Rule 82(a) or A of the rules of procedure and evidence which provides that in joint trials each accused shall be accorded the same rights as if he were being tried separately. The Chamber finds that evidence of a material fact of which sufficient notice has not been given adduced due to questions put to a witness by one accused in a multi-accused trial, cannot be used as evidence against the co-accused. The Chamber, therefore, grants the motion.

Thank you, Mr. President.