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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
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 12 March 2008

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION TO RECALL PROSECUTION
WITNESS BTH**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Deo Mbutu

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

[Signature]

INTRODUCTION

1. Prosecution Witness BTH testified in this case from 8 to 20 June 2006. On 25 February 2008, a copy of three CD Roms videos was disclosed to Joseph Nzirorera by the Prosecutor in the *Bizimungu et al.* case presenting an interview Witness BTH had with the parties in that case.¹ In the interview, the Witness would have admitted that he had lied in his testimony against Joseph Nzirorera.
2. On 3 March 2008, Joseph Nzirorera filed a motion moving the Chamber to recall Witness BTH on the ground of his false testimony.²
3. The Prosecutor does not oppose the motion.³ He nonetheless requests the Chamber to coordinate the recall of Witness BTH with the other ongoing trials in which the witness have testified.⁴
4. In his Reply Joseph Nzirorera urges the Chamber to grant the motion expeditiously, and to order that Witness BTH be heard during the week of 7 April 2008, after Witnesses BDW and AXA, and that he be examined-in-chief by Nzirorera and cross-examined by the other parties.⁵

DELIBERATIONS

5. According to the established jurisprudence of the Tribunal, the party seeking to recall a witness must demonstrate good cause.⁶ Assessing good cause requires fulfilling a two-pronged analysis: (1) considering the purpose for which the witness will testify; and (2) the reasons why the witness was not questioned earlier on those matters.

¹ *Prosecutor v Casimir Bizimungu et al.*, Case No. ICTR-99-50-T; See Interview of BTH by Bicamumpaka, 8 February 2008, transcriptions provided in Confidential Annex to Prosecutor's Response to Nzirorera's Motion to Recall BTH, filed on 10 March 2008.

² Joseph Nzirorera's Motion to Recall Witness BTH, filed on 3 March 2008. ("Joseph Nzirorera's Motion")

³ Confidential Prosecutor's Response to Nzirorera's Motion to Recall BTH, filed on 10 March 2008. ("Prosecutor's Reponse")

⁴ Prosecutor's Response, para. 2.

⁵ Joseph Nzirorera's Reply Brief, filed on 11 March 2008, paras. 2, 6.

⁶ *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumve* ("Bagosora et al."), Case No. ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination (TC), 19 September 2005, para. 2; *Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-T, Decision on the Defence Motion to Recall Witness KEL for Further Cross-Examination (TC), 28 October 2004, para. 5; *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al."), No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Ahmed Mbonyunkiza (25 September 2007) at para. 5.

6. Considering the acknowledgment by the Witness that he lied in his testimony before this Chamber, the Chamber finds that Joseph Nzirorera has shown good cause for recalling him.

7. The Prosecutor submits that the Chamber should consult with Trial Chamber II because it presides over the *Bizimungu et al.* and *Ndindiliyimana et al.* cases, in which Witness BTH has also testified.⁷ He argues that BTH's evidence could be addressed on a consolidated basis or according to an appropriate sequencing since the matter is likely to be addressed in all three trials.⁸

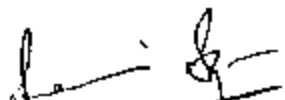
8. The Chamber finds that the complex scheduling of this case requires that Witness BTH be recalled for further examination for the week of 7 April 2008, before the commencement of the Defence case, although this may not facilitate coordination with his possible recall by Trial Chamber II.

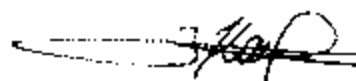
9. As Witness BTH is a Prosecution witness his recall on the request of Joseph Nzirorera must be considered as a reopening of the cross-examination by the Defence.


FOR THESE REASONS, THE CHAMBER

- I. **GRANTS** Joseph Nzirorera's Motion, and in consequence;
- II. **ORDERS** the recall of Prosecution Witness BTH before the Chamber for the week of 7 April 2008 after the hearing of Prosecution Witnesses BDW and AXA, for further cross-examination on the issue of false testimony;
- III. **DIRECTS** the Registry to take all the necessary steps for the recall of Witness BTH.

Arusha, 12 March 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



⁷ Prosecutor's Reponse, para. 2; *Prosecution v. Augustin Ndindiliyimana et al.*, Case No. ICTR-00-56-T.
⁸ Prosecutor's Response, para. 2.