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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: 19 March 2008

THE PROSECUTOR

v.

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

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**DECISION ON JOSEPH NZIRORERA AND EDOUARD KAREMERA'S MOTIONS
FOR NO CASE TO ANSWER**

Article 20 of the Statute; Rule 54 of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 17 January 2008, Joseph Nzirorera filed a motion pursuant to Rules 73 and 54 of the Rules of Procedure and Evidence ("Rules") in which he contends that he has no case to answer on ten paragraphs of the Indictment.¹ On 31 January 2008, Edouard Karemera filed a similar motion submitting that the Prosecution had failed to produce any evidence for 15 paragraphs of the Indictment.² The Prosecution opposes both motions, but concedes that it has led no evidence on three paragraphs of the Indictment and accordingly seeks leave to withdraw them.³

2. The Chamber notes that the relief sought by those Defence Motions is closely connected to the relief sought in the applications made by each Accused under Rule 98 bis of the Rules for entry of judgement of acquittal on all counts charged in the Indictment. Although the issues submitted in the applications on judgement of acquittal and "no case to answer" could have been addressed in a consolidated decision, the Chamber considers it more appropriate to issue separate decisions to simplify the articulation of its reasoning.⁴

DELIBERATION

3. Rule 98bis of the Rules confers upon the Chamber the power to enter a judgement of acquittal on any counts in the indictment where there is insufficient evidence to sustain a conviction. The clear wording of the Rule and the settled jurisprudence implies that the jurisdiction is restricted to orders for judgment of acquittal on counts in the indictment, and not paragraphs.⁵ When considering Rule 98bis motions, Chambers have in some instances found that there is sufficient evidence to sustain conviction on a count in the indictment yet,

¹ Joseph Nzirorera's Motion For Finding of No Case to Answer pursuant to Rule 73 of the Rules of Procedure and Evidence, filed 17 January 2008; Joseph Nzirorera's Reply Brief: Motion for Finding of No Case to Answer, filed 4 February 2008.

² Submission of Edouard Karemera in Response to the Request of Joseph Nzirorera Entitled "Motion for Finding of No Case to Answer", filed 31 January 2008.

³ Prosecutor's Consolidated Response on No Case to Answer Issue, filed 6 February 2008.

⁴ See *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Defence Motions for Judgement of Acquittal (TC), 19 March 2008.

⁵ See for example, *Prosecution v. Bagosora et al.*, Case No. ICTR-98-41-T Decision on Motions for Judgement of Acquittal (TC), 2 February 2005 para. 8; *Prosecution v. Rwamakuba*, Case No. ICTR-98-44C-T, Decision on Defence Motion for Judgement of Acquittal (TC), 28 October 2005, para. 8; *Prosecution v. Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Tharcisse Muvunyi's Motion for Judgement of Acquittal pursuant to Rule 98bis (TC), 13 October 2005, para. 39.

nonetheless, ruled that the accused should not be called upon to rebut certain allegations upon which a conviction could be based and for which no evidence had been adduced.⁶ The Chamber considers that such rulings are consistent with Articles 19 and 20 of the Statute, which oblige the Chamber to guarantee a fair and expeditious trial with full respect of the rights of the accused, and by Rule 54 of the Rules which empowers the Chamber to make orders for the conduct of the trial. Such a decision has the effect of clarifying the case which the defence has to answer by eliminating allegations on which no convictions could be entered because there was no evidence adduced by the Prosecutor during the presentation of his case.

4. However, the Chamber considers that the promotion of a fair trial does not require a paragraph by paragraph analysis of the indictment to eliminate any allegation on which evidence has not been led, or to evaluate the quality of evidence that has been adduced. In any event, such an analysis is not appropriate to this case, where the indictment contains inter-dependent allegations describing a series of events which seeks to cumulatively establish a systematic, continuing criminal campaign.

5. In the present case, the Chamber has already concluded in its Decision on the Accused requests for judgement of acquittal under Rule 98 bis that there is sufficient evidence to call on the Accused to answer each count in the Indictment.

6. In his reply to Joseph Nzirorera's Motion, the Prosecution concedes that it failed to adduce evidence with regard to paragraphs 31.2, 49 and 63.1 in the Indictment and applies to withdraw them. The Chamber accepts that no evidence was led on these paragraphs and makes the order accordingly.

7. Edouard Karemera submits that he has no case to answer to paragraphs 5, 15, 18, 19 and 20 of the Indictment for failure of the Prosecution to have led evidence on those allegations. The Chamber notes that those paragraphs contain a general description of the Prosecution's theory as to the modes of participation and modes of responsibility of the crimes allegedly committed by the three Accused. Those paragraphs must be read in conjunction with other paragraphs of the Indictment to which evidence has been heard. Furthermore the Chamber's conclusion as to the form of participation and liability of the accused in the crimes is a matter for the Chamber to decide at the end of the trial when

⁶ See for example, *Prosecutor v Mpambara*, No. ICTR-2001-65-T, *Decision on the Defence's Motion for Judgement of Acquittal* (TC), 21 October 2003, para. 7; *Prosecutor v. Zigiranyirazo*, No. ICTR-2001-73-T, *Decision on the Defence Motion Pursuant to 98bis* (TC), 21 February 2007, para. 29; *Prosecutor v Rukundo*, No. ICTR-2001-70-T, *Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98 bis* (TC), 22 May 2007, paras. 7-9; *Prosecutor v Nindiyimana et al*, No. ICTR-2000-56-T, *Decision on Defence Motions for Judgement of Acquittal*, (TC), 20 March 2007, para. 10.

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assessing the evidence as a whole. In relation to the remaining paragraphs under challenge,⁷ Karemera's allegations are too generic and general to warrant any further evaluation. Moreover, concerning the allegations set out at paragraphs 68, 69 and 80 of the Indictment, the Chamber has already indicated in its Rule 98bis decision that the Prosecutor has led sufficient evidence to call on the Accused to answer the counts to which these paragraphs relate.

8. In addition to the paragraphs of the Indictment to which the Prosecution concedes that no evidence was led, Joseph Nzirorera moves the Chamber to consider seven other paragraphs of the Indictment to which he would have no case to answer for failure of the Prosecution to have adduced any evidence thereto.

9. In conducting its review, the Chamber notes that many of the paragraphs which have been challenged by the Accused contain multiple allegations. The Chamber considers that, in cases where some evidence was led on part of a paragraph of the Indictment, a finding of no case to answer on that paragraph would not be justified.

10. The Chamber also notes that some of the paragraphs challenged by Joseph Nzirorera are linked to other paragraphs in the Indictment on which evidence has been adduced. The Chamber considers that in such cases, it will address this issue at the end of the case when considering the evidence as a whole.

11. Relying upon those principles, the Chamber will address in turn the seven paragraphs identified in Joseph Nzirorera's motion.

Para 32.2 Passing out ceremony

12. Joseph Nzirorera submits that whereas a number of Prosecution witnesses testified about the "swearing in" ceremony for Kajelijeli alleged in paragraph 53 of the Indictment, no witness gave evidence of the "passing out" ceremony in Mukingo commune alleged in paragraph 32.2.

13. Witness ANU testified that he attended the swearing in ceremony for Kajelijeli, where Joseph Nzirorera addressed the crowd and that during this celebration there was a march-past by the *Interahamwe* who had been selected. The Chamber does not consider that the pleading must be interpreted to imply that both paragraphs refer to different events. Accordingly, the testimony of Witness ANU could be considered in connection with the allegations in both paragraphs.

⁷ Edouard Karemera refers to paragraphs 24.2, 33.2, 37, 40, 41, 55, 64.2, 68, 69 and 80.

Para 32.4 Ruhengeri Pacification Meeting

14. Joseph Nzirorera submits that the Prosecution relied on a diary entry by Pauline Nyiramasuhuko (admitted as exhibit P-224) to support its allegation in paragraph 32.4 of the Indictment that he participated in a pacification meeting in Ruhengeri on or about 6 May 1994 and since it was not subject to cross-examination it cannot be used as the basis of a conviction unless corroborated.⁸

15. The Chamber considers that there is no general rule requiring corroboration for documentary evidence, and that the *Prlic* decision relied on by Nzirorera in his Motion is distinguishable, as it relates to convictions based solely or in a decisive manner on the deposition of an individual whom the accused had no opportunity to examine.⁹ However, the presence or absence of corroboration or other supporting material may, subsequently, become relevant when the Chamber is considering whether there is proof beyond reasonable doubt, which is a matter to be addressed considering the evidence of both Parties as a whole.

Para 40 Attendance of Accused at *Préfets* meeting

16. Joseph Nzirorera submits that the Prosecution led no evidence that he or his co-Accused participated in a meeting of *préfets* at the *Hôtel des Diplomates* on 11 April 1994, as alleged in paragraph 40 of the Indictment.

17. Paragraph 40 contains a number of allegations relevant to the overall case against the Accused, including their alleged participation in a joint criminal enterprise to commit the crimes for which they are charged. Some Prosecution witnesses testified that they attended the meeting. They testified to its content, the presence of various members of the Interim Government and *préfets*, and the delivery of security reports, as alleged in the Indictment¹⁰. Prosecution witnesses also gave evidence as to the presence of the Accused and their participation in activities at *Hôtel des Diplomates* on or around that date.¹¹ Accordingly, the Chamber considers that evidence was led on this paragraph.

⁸ Nzirorera's Reply Brief, para. 29, citing *Prosecutor v. Prlic et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlic's Questioning into Evidence (TC), 23 November 2007, para 59 (*sic*).

⁹ *Prosecutor v. Prlic et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlic's Questioning into Evidence (AC), 23 November 2007.

¹⁰ Witness HH, T. 9 November 2006 pp. 13-15; Witness QBG T. 19 July 2007 pp. 27- 29; Exhibit D. N223 admitted 18/10/2005.

¹¹ In regard to the presence and activities of the accused at the *Hôtel Des Diplomates* on or about 10 April 1994 see paragraph 38 of the Indictment and the following trial transcripts: Witness G, T. 11 October 2005 pp.

Paras 50 and 59 Kabuga Meeting in Gisenyi and Fund Raising Meetings in Gisenyi

18. Joseph Nzirorera contends that the Prosecution led no evidence concerning paragraph 50 of the Indictment, in which it was alleged that Félicien Kabuga organized a meeting in Gisenyi on 25 April 1994 to create a Fonds de Défense Nationale. He also contends that the Prosecution led no evidence on the Accused's participation in Hutu Power fundraising meetings in Gisenyi, as alleged in paragraph 59 of the Indictment.

19. Both of these paragraphs allege fundraising to support militia attacks against the Tutsi population in Gisenyi. Whilst no evidence was adduced on some of the allegations in these paragraphs, the Chamber recalls that evidence was led concerning a fund raising meeting at the "Palais MRND" in Gisenyi on 20 June 1994, at which 7 million francs was collected to support the army.¹² Further evaluation of the quality of the Prosecution evidence to prove the allegations set out in paragraphs 50 and 59 of the Indictment is premature and unwarranted at this stage.

Para 62.11 Telephone calls by Nzirorera

20. Joseph Nzirorera contends that no evidence has been led that he made telephone calls to the Mukingo commune office or sous-préfecture office in Busengo as alleged under paragraph 62.11 of the Indictment.

21. Mukingo and Busengo are in the Ruhengeri préfecture. Paragraphs 62.1 to 62.12 make inter-dependent allegations on a series of events describing a systematic, continuing campaign against the Tutsi in Ruhengeri préfecture by Joseph Nzirorera. The Chamber recalls that evidence was led on attacks against and killings of Tutsi in Ruhengeri¹³, and considers that it would be inappropriate to isolate paragraph 62.11 at this stage of the proceedings.

Para 62.12 Nzirorera responsibility for Court of Appeals attack

22. Joseph Nzirorera contends that it cannot be established from the testimony of the two Prosecution witnesses who gave evidence concerning paragraph 62.12 of the Indictment that

56-57, 18 October 2005 pp. 28-31, 35-36 and 25 October 2005 pp. 44-46; Witness T, T. 30 May 2006 p. 14. See also hearsay witnesses: Witness HH T. 9 November 2006 p. 14; Witness ALG, T. 2 November 2006 pp. 64-66; Witness UB, T. 27 February 2006 pp. 43-44, 57.

¹² Witness XBM, T. 4 July 2006 pp. 5-6.

¹³ See for example, Witness GAV, T. 4 October 2007 pp. 43-47; Witness GBU, T. 4 December 2006 pp. 22-27; Witness ANU, T. 13 June 2007 pp. 34-35; Witness UB, T. 22 February 2006 p. 38; Witness ANU, T. 13 June 2007 p. 21 and T. 18 June 2007 pp. 41-46; Witness GBU, T. 4 December 2006 p. 38.

he, among others, gave orders to attack the Ruhengeri Court of Appeal, that he knew of the attack either before or afterwards, and that he failed to prevent the attack or punish the Mukingo Interahamwe for it.

23. Paragraph 62.12 is part of the cumulative allegations on attacks in Ruhengeri described from paragraphs 62.1 to 62.12 of the Indictment. For the same reasons as discussed above, it would be inappropriate to isolate, at this stage of the proceedings, that paragraph from the other paragraphs describing the whole event.

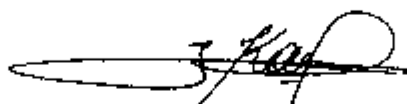
FOR THE ABOVE REASONS, THE CHAMBER

- I. GRANTS** in part Joseph Nzirorera's Motion;
- II. DENIES** Edouard Karemera's Motion in its entirety;
- III. ORDERS** the Prosecution to amend the Indictment in order to remove paragraphs 31.2, 49, and 63.1 to which no evidence was led.

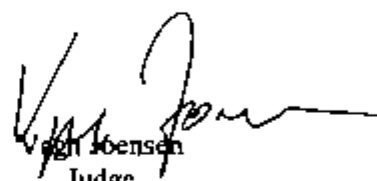
Arusha, 19 March 2008, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Leigh Jensen
Judge

