



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***

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR VIDEO-LINK
TESTIMONY OF JEAN BAPTISTE BUTERA**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

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INTRODUCTION

1. Joseph Nzirorera moves for an order that the testimony of Defence Witness Jean Baptiste Butera be taken by video-link from Belgium, as soon as possible ("Motion").¹ He submits that his Counsel intends to show Butera his written statement of 2 August 2006, and ask him to affirm its content. The statement in question reads as follows:

"1. I was the Director of Protocol and Public Relations for Kigali-Ville prefecture from 1991 until I went into exile in July 1994. I was one of five Directors working directly under the prefet, Tharcisse Renzaho

2. As a Director, I participated in the meetings held between the prefet and the conseillers at the prefecture office during the period during the period after 6 April 1994. I have no knowledge of any occasion in which Joseph Nzirorera presided over, or attended, a meeting at the prefecture office in which the prefet, conseillers, and Interahamwe were present. I never attended such a meeting."²

2. Joseph Nzirorera submits that the statement rebuts paragraph 32.3 of the Indictment,³ and challenges the credibility of Prosecution Witnesses UB, ALG, and AWE, who testified that Butera attended the meeting. The Prosecution opposes the application in its entirety.⁴

DELIBERATIONS

Standard for allowing testimony via video-link

3. The receipt of testimony by video-link is an exception to the general principle, articulated in Rule 90 (A) of the Rules of Procedure and Evidence ("Rules") that witnesses "shall, in principle, be heard directly by the Chambers." A Chamber may authorize testimony by video-link under Rule 54 where it is in the interests of justice, based on a consideration of (i) the importance of the testimony; (ii) the inability or unwillingness of the witness to attend; and (iii) a good reason adduced for the witness' inability or unwillingness to attend the trial

¹ Joseph Nzirorera's Motion for Video-Link Testimony of Jean-Baptiste Butera, 21 February 2008 ("Nzirorera's Motion"); Reply Brief, 3 March 2008.

² Annex "A" to Nzirorera's Motion.

³ Paragraph 32.3 of the Indictment reads, in relevant part: "On or about 30 April 1994 at a meeting of the *conseil de sécurité* at the Kigali-ville *préfecture* office, Joseph Nzirorera publicly thanked the *Interahamwe* of Kigali for the good work that they were doing and offered them money for the purchase of beer. . ."

⁴ Prosecutor's Response to Joseph Nzirorera's Motion for Video-Link Testimony of Jean Baptiste Butera, 26 February 2008 ("Prosecution's Response").

proceeding.⁵ If the witness is unwilling to attend, the refusal must be genuine and well-founded, and give the Chamber reason to believe that the testimony will not be heard unless the video-link is authorized.

The importance of the testimony

4. The Prosecution contends that Butera's proposed testimony is not sufficiently important to merit testimony via video-link because: (1) his testimony will be short and contradict that of two Prosecution witnesses; (2) he has a strong incentive to deny attendance at the meeting in question, as his participation in such a meeting would also incriminate him; and (3) his testimony may be cumulative because neither the Prosecution nor the Chamber have been sufficiently informed about the importance of his testimony relative to that of other Defence witnesses.

5. The Chamber finds that Butera's proposed testimony, although short, is relevant to rebut the specific allegation contained in Paragraph 32.3 of the Indictment, which states that Joseph Nzirorera attended a security council meeting at the Kigali prefecture office on 30 April 1994, and publicly thanked the *Interahamwe* for their good work. Further, the proposed testimony tends to challenge the testimony of Prosecution Witnesses UB, ALG and AWE. Additionally, the Chamber notes that the fact that it is unlikely that Butera's testimony can be obtained at a later stage, when it would become apparent that the Defence would not be able to call other witnesses to rebut Paragraph 32.3 of the Indictment and challenge the credibility of the Prosecution witnesses in question, makes it sufficiently important for it to be heard now via video-link.

The inability or unwillingness of the witness to attend

6. Although the Prosecution concedes that the rapidly deteriorating health of a witness might constitute an exceptional circumstance that justifies testimony via video-link, it asserts that it has not received enough information regarding Butera's actual physical condition.

7. According to Joseph Nzirorera's submissions, his Co-Counsel and investigator visited Butera at his nursing home on 16 February 2008. While there, they observed his physical condition and estimated that he would be too weak to travel to Arusha to give testimony. Butera's doctor confirmed their estimation in a letter dated 20 February 2008, which is attached to the Motion.

⁵ Karemera et al., Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T (TC), 14 September 2005.

8. The Chamber does not see any reason not to rely on the representations made by the Defence in the present circumstances, supported by those of Butera's doctor. In other instances, the Chamber has relied upon the representations made by the Prosecution when seeking a relief. The Chamber therefore is satisfied that the witness is unable to travel to Arusha to testify.

Whether good reason exists for the witness's unwillingness or inability to attend

9. The Chamber finds that Butera's deteriorating health constitutes a genuine and well-founded reason for his inability to travel to Arusha to testify. Accordingly, the Chamber has reason to believe that the testimony will not be heard unless the video-link is authorized.

FOR THESE REASONS, THE CHAMBER

I. GRANTS Joseph Nzirorera's motion; and

II. REQUESTS the Registrar to make all the necessary arrangements so that the testimony of Defence Witness Jean Baptiste Butera be taken by video-link from Belgium, as soon as possible after the resumption of proceedings on 7 April 2008.

Arusha, 19 March 2008, done in English.

Dennis C. M. Byron

Presiding Judge

Gberdao Gustave Kam

Judge

Vagn Joensen

Judge

[Seal of the Tribunal]