

ICTR-98-44-T
26-03-2008
(34421-34417)

34421
A



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: 26 March 2008

JUDICIAL RECORDS ARCHIVES
RECEIVED

2008 MAR 26 11 P 5: 22
D. J. S. 2008

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION TO ADMIT DOCUMENTS
AUTHORED BY ENOCH RUHIGIRA**

Rule 89(C) of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takeh Sendze
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

34420

INTRODUCTION

1. On 11 February 2008, Joseph Nzirorera filed a motion pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules") to have the Chamber admit certain documents authored by Enoch Ruhigira, Director of the Cabinet of the President of Rwanda from 1991 to 1994.¹ The documents are attached to the Motion as exhibits (A)-(J); (J) is a translation of (I).

2. The Prosecution does not dispute that Enoch Ruhigira is the author of the documents in question, and does not oppose the admission of documents (C), (D), (E), (F), and (H). However, it objects to the admission of documents (A), (B), (G), (I), and (J) because it submits that they are irrelevant and lack probative value.²

DELIBERATIONS

Applicable law

3. Under Rule 89(C) the Chamber may admit any relevant evidence it deems to have probative value.³ In order for evidence to be considered relevant, the moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.⁴ To establish the probative value of the evidence, the applicant must show that the evidence tends to prove or disprove an issue.⁵ It is sufficient for the moving party to establish the *prima facie* relevance and probative value of the evidence for admission under Rule 89(C).⁶

¹ Joseph Nzirorera's Motion to Admit Documents Authorized by Enoch Ruhigira, 11 February 2008 ("Nzirorera's Motion"); Reply Brief: Joseph Nzirorera's Motion to Admit Documents Authorized by Enoch Ruhigira, 20 February 2008 ("Nzirorera's Reply").

² Prosecutor's Response to Joseph Nzirorera's Motion to Admit Documents Authorized by Enoch Ruhigira, 18 February 2008 ("Prosecutor's Response").

³ *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44, ("Karemera, et al."), Decision on the Prosecution Motion for Admission Into Evidence of UNAMIR Documents (TC), 20 October 2007, paras. 5-7.

⁴ *The Prosecutor v. Pauline Nyiramasuhuko and Arsène Shalom Ntahobali*, Case No. ICTR-97-21-AR73, Decision on the Appeals by Pauline Nyiramasuhuko and Arsène Shalom Ntahobali on the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and ABZ Inadmissible" (AC), 2 July 2004, para. 15.

⁵ *Karemera et al.*, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumpatse (TC), 2 November 2007, para. 2.

⁶ *Bagosora et al.*, Decision on Bagosora Motion to Exclude Photocopies of Agenda, 11 April 2007, para. 4.

34419

Relevance and probative value

4. Initially, the Chamber notes that the Prosecution does not oppose the admission of Documents (C), (D), (E), (F) and (H), which are letters from Enoch Ruhigira dated: 30 October 1992, 30 December 1992, 13 January 1993, and 26 January 1993, respectively. These letters concern the position of President Habyarimana and other MRND leaders on the Arusha negotiations, and the way they were being conducted. The Chamber is satisfied that the documents have sufficient relevance and probative value to be admitted into evidence.

5. Document (A) is a letter dated 18 November 1991 from Enoch Ruhigira to the Minister of the Interior regarding attacks by political opponents against MRND property in Gikongoro prefecture.

6. The Prosecution submits that this document is irrelevant because: (1) it does not advance the evidence already on the record concerning the fighting among the Rwandan political parties due to the introduction of multiparty politics; (2) it refers to events before the critical period of 1992-1994; and (3) it focuses on events in Gikongoro, which has not figured significantly in the evidence thus far.

7. The Chamber finds that the document reflects on the background for the MRND leadership's decision to establish the Interahamwe, which is an issue in this trial and, therefore, that it has sufficient relevance and probative value to be admitted into evidence.

8. Document (B) is a letter dated 9 July 1992 from Enoch Ruhigira to President Habyarimana concerning a Cabinet meeting that was held in the absence of the Prime Minister and the Minister of Foreign Affairs, where he expresses concern about coordination with these ministers.

9. The Prosecution submits that the document is irrelevant and without probative value because it does not show how the Arusha Accords were conducted, nor with what motives. The Prosecution also claims that the document does not demonstrate that the MRND leaders were acting in good faith and without a desire to exterminate the Tutsi, as purported by Joseph Nzirorera in his Motion.

10. The Chamber finds that document (B) reflects the attitude of the MRND leaders regarding the Arusha Accords, which is an issue in this trial and, therefore, that it has sufficient relevance and probative value to be admitted into evidence.

34418

11. Document (G) is a letter dated 15 June 1993 from Enoch Ruhigira to the Minister of Foreign Affairs recalling him to Kigali for consultations concerning the Arusha Accords.

12. The Prosecution submits that the document is irrelevant and without probative value because it is only a summons, and because it does not show, as Joseph Nzirorera contends in his Motion, that the President was trying to make the negotiations succeed with no desire to exterminate the Tutsi.

13. The Chamber finds that document (G) reflects the coordination of views on the Arusha Accords in the multiparty government, which is an issue in this trial and, therefore, that it has sufficient relevance and probative value to be admitted into evidence.

14. Document (I) is a letter from Enoch Ruhigira, dated 29 March 1994, to Special Representative Booh Booh that expresses the desire of President Habyarimana to swear in the Broad Based Transitional Government. Document (J) is the English translation of Document (I).

15. The Prosecution concedes that the document is relevant, but objects to its probative value. It submits that, contrary to Joseph Nzirorera's assertion, the document cannot be offered to rebut the Prosecution's claim that the President obstructed the implementation of the Arusha Accords so that the Tutsi could be exterminated. Furthermore, the Prosecution claims that Enoch Ruhigira should be called to testify because this document concerns a contested fact.

16. The Chamber finds that Document (I) and its translation (J) reflect President Habyarimana's attitude towards the implementation of the Arusha Accords, which is an issue in the trial and, therefore, that they have sufficient relevance and probative value to be admitted into evidence. Whether or not the documents tend to prove what Joseph Nzirorera claims they do is a question of the weight to be attributed to the documents, and is no impediment to the admission into evidence of the documents. The admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, an issue which is to be decided by the Chamber after hearing the totality of the evidence.⁷

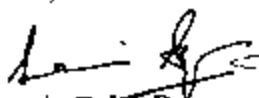
⁷ *Pauline Nyiramasuhuko v. The Prosecutor*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 7.

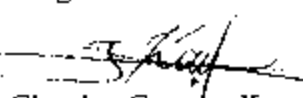
34417

FOR THE ABOVE REASONS, THE CHAMBER,

- I. GRANTS** Joseph Nzirorera's Motion in its entirety;
- II. ADMITS** into evidence documents (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) attached to the Motion; and
- III. REQUESTS** the Registrar to assign each of these documents an exhibit number.

Arusha, 26 March 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

