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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: 8 April 2008

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVED
RECEIVED

2008 APR - 8 1 P 4: 02
[Signature]

**INTERIM ORDER ON JOSEPH NZIRORERA'S SECOND MOTION FOR
SUBPOENA TO LÉON MUGESERA**

Rules 33 and 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:

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Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

[Signature]

1. On 25 January 2008, the Defence for Nzirorera moved the Chamber to issue a subpoena to Léon Mugesera and allow him to testify by video-link ("First Motion").¹ Though not opposing the issuance of the subpoena *per se*, the Prosecution requested that Léon Mugesera be heard in Arusha.² The Chamber denied the First Motion because it found that the Defence for Nzirorera failed to show that all reasonable steps had been taken to obtain the voluntary cooperation of the witness.³

2. The Defence for Nzirorera subsequently filed a second motion to issue a subpoena to Léon Mugesera, presenting further efforts made to secure the witness' voluntary cooperation ("Second Motion").⁴ Though not opposing the Second Motion *per se*, the Prosecution raises concerns about the reasonableness of the Defence for Nzirorera's demonstrated steps, and whether the witness' testimony is necessary and appropriate for the conduct and fairness of the trial.⁵

3. In its First Motion, the Defence for Nzirorera had only shown that it attempted once to persuade Léon Mugesera to come to testify. The Chamber considered that this was an insufficient demonstration that all reasonable steps had been taken to obtain the voluntary cooperation of the witness.⁶ In its Second Motion, the Defence for Nzirorera indicates having left telephone messages for Léon Mugesera and sending him further emails trying to convince him to testify, but receiving no reply. The Defence for Nzirorera submits that it has now sufficiently fulfilled its requirement.

4. The Appeals Chamber has stated that where a prospective witness had been previously uncooperative with the defence, the issuance of a subpoena would only occur if the Judge or Trial Chamber considered that it was reasonably likely that there would be cooperation if such an order were made.⁷ However, the Appeals Chamber also stated that this is not a determination which the defence may safely make for itself, and proposed some alternative suggestions such as issuing a subpoena requiring the prospective witness to appear

¹ Joseph Nzirorera's Motion for Subpoena to Léon Mugesera, filed on 25 January 2008.

² Prosecutor's Response to Joseph Nzirorera's Motion for Subpoena to Léon Mugesera, filed on 30 January 2008.

³ *Karemera et al.*, Decision on Joseph Nzirorera's Motions for Subpoena to Léon Mugesera and President Paul Kagame, 20 February 2008.

⁴ Joseph Nzirorera's Second Motion for Subpoena to Léon Mugesera, filed on 3 March 2008; see also Reply Brief, filed on 10 March 2008.

⁵ Prosecutor's Response to Joseph Nzirorera's Second Motion for Subpoena to Léon Mugesera, filed on 6 March 2008.

⁶ *Karemera* Decision, paras. 8-9.

⁷ *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33, Decision on Application for Subpoenas (AC), 1 July 2003, para. 12.


before the Trial Chamber to convey the importance of his cooperation to assist in producing a just result in the trial, and how he will be afforded protection by the Tribunal if it is required.⁸

5. Due to the particular circumstances of this case, the Chamber deems it necessary to make use of an alternative method to assess Léon Mugesera's willingness to cooperate in Joseph Nzirorera's case before deciding the present Motion. Pursuant to Rule 33 of the Rules of Procedure and Evidence ("Rules"), the Registry may assist in that determination.

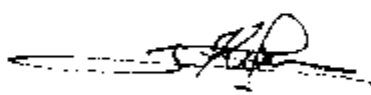
FOR THESE REASONS, THE CHAMBER

- I. **REQUESTS**, pursuant Rules 33 and 54 of the Rules, the Registry to make all reasonable efforts to contact Léon Mugesera and enquire about his willingness to testify in Joseph Nzirorera's case in Arusha or by videoconference;
- II. **DIRECTS** the Registry to submit a report on these efforts and, where appropriate, the reasons for Léon Mugesera's unwillingness to testify, to the Chamber as soon as possible, but no later than 1 May 2008; and
- III. **REQUESTS**, if necessary, the Government of Canada to cooperate in facilitating this contact.

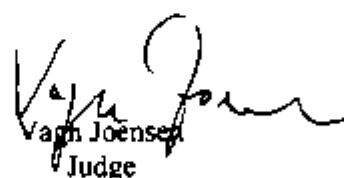
Arusha, 8 April 2008, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagh Joensen
Judge

[Seal of the Tribunal]



⁸ Ibid