



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
14-4-2008  
(35021-35018)

35021  
Zulu  
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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:** 14 April 2008

JUDICIAL ROOM 1001  
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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 ADMIT STATEMENT OF  
BONAVENTURE UBALIJORO**

*Rule 92 bis of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

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Peter Robinson and Patrick Nimy Mayidika  
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*[Handwritten signature]*

## INTRODUCTION

1. On 16 May 2006, Prosecution Witness ZF testified that he observed a meeting in Butotori Camp in Gisenyi in the second half of 1992.<sup>1</sup> According to ZF, that meeting was attended by fifteen persons, including Colonel Théoneste Bagosora, Joseph Nzirorera, and Ambassador Bonaventure Ubalijoro ("Ambassador Ubalijoro").<sup>2</sup> Witness ZF further testified that Colonel Bagosora presided over the meeting, and said that the Hutus needed to exterminate the Tutsis first because the Tutsis were already planning to exterminate the Hutus.<sup>3</sup>

2. On 18 May 2006, Ambassador Ubalijoro's written statement dated 28 March 2005 was marked for identification as Exhibit IDNZ-15.<sup>4</sup> In his statement, Ambassador Ubalijoro claims that he has never been to Butotori Camp and, furthermore, that he never attended any meetings at which the extermination of Tutsis was planned or discussed.<sup>5</sup> On 9 November 2007, Prosecution Witness AWD testified that Ambassador Ubalijoro had recently died.<sup>6</sup>

3. Joseph Nzirorera has filed a motion pursuant to Rule 92 *bis* (C) of the Rules of Procedure and Evidence ("Rules") to admit the statement of Ambassador Ubalijoro as evidence in this case.<sup>7</sup> The Prosecution opposes the motion in its entirety.<sup>8</sup>

## DELIBERATIONS

4. Under Rule 92 *bis* (A), a Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. The Rule lists a non-exhaustive set of factors that favour admission of a written statement, as well as a non-exhaustive set of factors against admitting a written statement. Pursuant to subrule (B), a written statement must be accompanied by a declaration by the person making the statement that affirms the veracity of the statement, and it must be witnessed by a person authorised to witness such a declaration. However, notwithstanding subrule (B), the written statement of a deceased individual may be admitted pursuant to subrule (C) if a Chamber is satisfied, upon a

<sup>1</sup> T. 16 May 2006, p. 61.

<sup>2</sup> *Ibidem*.

<sup>3</sup> T. 16 May 2006, p. 62.

<sup>4</sup> T. 18 May 2006, p. 54.

<sup>5</sup> Exhibit No. IDNZ-15.

<sup>6</sup> T. 9 November 2007, p. 2.

<sup>7</sup> Joseph Nzirorera's Motion to Admit Statement of Bonaventure Ubalijoro, 20 February 2008; Reply Brief.

<sup>8</sup> Prosecutor's Response to Joseph Nzirorera's Motion to Admit Statement of Bonaventure Ubalijoro under Rule 92 *bis* (C), 25 February 2008.

balance of probabilities, that the witness is deceased, and finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

5. As a preliminary matter, the Chamber finds that Ambassador Ubalijoro's statement goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. The statement merely claims that Ambassador Ubalijoro did not attend the meeting in question; it does not include testimony regarding whether the meeting actually took place, or, if so, whether Joseph Nzirorera was present. Additionally, the statement is relevant and has probative value because it goes to proof of the credibility of a Prosecution witness.

6. Although the Prosecution has stated that it "has no reason to doubt the testimony of AWD in relation to Ubalijoro's recent demise," it asserts that Joseph Nzirorera has not submitted satisfactory proof of Ambassador Ubalijoro's death because: (1) AWD's testimony is not sufficient proof; and (2) no death certificate or affidavit has been made available. However, taking into account Prosecution Witness AWD's sworn testimony, and that the fact that the Prosecution finds no reason to doubt its veracity, the Chamber is satisfied that Ambassador Ubalijoro is currently deceased on a balance of probabilities.

7. The Prosecution also contends that Ambassador Ubalijoro's statement should not be admitted because it is only admissible as "evidence of a cumulative nature" under Rule 92 *bis* (A)(i)(a), and the Chamber cannot make this determination without Joseph Nzirorera's list of prospective witnesses or summaries of their anticipated testimonies, which he has not yet provided. The Chamber disagrees with this assertion because the list of factors in favour of admitting evidence in the form of a written statement contained in Rule 92 *bis* (A)(i) is not exhaustive. Rule 92 *bis* (A)(i) clearly states that these factors "include, but are not limited to" the circumstances listed.

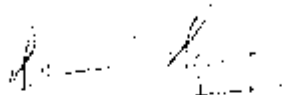
8. Finally, the Chamber finds that there are satisfactory *indicia* of reliability in the circumstances in which the statement was made and recorded. Joseph Nzirorera's Counsel avers that he witnessed Ambassador Ubalijoro sign the statement in front of his son, an investigator for Joseph Nzirorera and a United Nations Security Officer.

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**FOR THESE REASONS, THE CHAMBER**

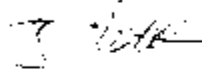
- I. **GRANTS** Joseph Nzirorera's request that the statement of Ambassador Ubalijoro, previously marked for identification as Exhibit IDNZ-15, be admitted as evidence in this case;
- II. **REQUESTS** the Registry to assign the statement in question an exhibit number in this case.

Arusha, 14 April 2008, Done in English.



Denis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagn Joensen

Judge

[Seal of the Tribunal]

