



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: 29 May 2008

THE PROSECUTOR

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION
OF ADMISSION OF PROSECUTION EXHIBITS P293-298**
Rules 89(C) and 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takeh Sendze

Deo Mbuto

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

INTRODUCTION

1. On 25 January 2008, the Chamber ordered the admission of documents purporting to be minutes of the Military Crisis Committee from early April 1994, and gave them the exhibit numbers P293-298.¹ Those documents were appended to the expert report of André Guichaoua. On 10 April 2008, Joseph Nzirorera offered into evidence as an exhibit a list of people evacuated from the French Embassy on 12 April 1994, including Cyprien Munyumpundu (Defence exhibit IDNZ-67); that list was also appended to the Guichaoua report. The Chamber refused admission of the list.²

2. Because he considers that the minutes and the list are of identical provenance, Joseph Nzirorera moves the Chamber to reconsider the portion of the 25 January 2008 decision, which admits Prosecution exhibits P293-298 or, alternatively, to reconsider its decision denying admission of Defence exhibit IDNZ-67.³ The Prosecution opposes the motion in its entirety.⁴

DELIBERATIONS

3. The Chamber has an inherent power to exercise its discretion and reconsider its decisions, when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (2) there has been a material change in circumstances since it made its original Decision, or (3) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby warranting the exceptional remedy of reconsideration.⁵ The Chamber recalls that it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.⁶

¹ *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera, Case No. ICTR-98-44-T*, Decision on the Prosecutor's Motion for Admission of Certain Exhibits into Evidence (TC), January 1, 2008.

² T. 10 Apr. 2008, p. 3.

³ Joseph Nzirorera's Motion for Reconsideration of Admission of Prosecution Exhibits 293-298 ("Nzirorera's Motion"), filed on 14 April 2008; Reply Brief: Joseph Nzirorera's Motion for Reconsideration of Admission of Prosecution Exhibits 293-298 ("Nzirorera's Reply"), filed on 22 April 2008.

⁴ Prosecution Response to Nzirorera's Motion for Reconsideration of Admission of Prosecution Exhibits P293-8 ("Prosecution Response"), filed on 21 April 2008.

⁵ *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera, Case No. ICTR-98-44-PT ("Karemera et al.")*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005, para. 8.

⁶ *Karemera et al.*, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions (TC), 8 November 2007.

4. Joseph Nzirorera contends that the Chamber's refusal to admit Defence exhibit IDNZ-67 is a new fact or circumstance resulting in an injustice that merits reconsideration because that exhibit is of the exact same provenance as Prosecution exhibits P293-98, which the Chamber already admitted.

5. While it is true that both sets of exhibits were appended to the Guichaoua report, the Chamber notes that Prosecution exhibits P293-298 contain a signed attestation (P293) by Mr. Guichaoua that explains the source, methods of recollection, transcription, and chain of custody of the minutes. This is precisely why the Chamber considered that they had passed the threshold of authenticity for admission; the Chamber did not admit the minutes based on the mere fact that they had been appended to Guichaoua's report, as Joseph Nzirorera suggests.⁷ Nzirorera has not produced a similar attestation or document that corroborates the authenticity of Defence exhibit IDNZ-67. Accordingly, the Chamber does not find that a new fact or circumstance exists, which has resulted in an injustice to Nzirorera that merits reconsideration.

FOR THESE REASONS, THE CHAMBER

I. DENIES the motion in its entirety.

Arusha, 29 May 2008, done in English.

Dennis C. M. Byron

Presiding Judge

Gberdao Gustave Kam

Judge
(Absent during signature)

Vagn Joensen

Judge
(Absent during signature)

[Seal of the Tribunal]

⁷ *Karemera, et al.*, Decision on the Prosecutor's Motion for Admission of Certain Exhibits into Evidence (TC), 25 January 2008, para. 64.