



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-98-44-T  
2-7-2008  
(36078 - 36076)

36078  
Jury

**TRIAL CHAMBER III**

Case No. ICTR-98-44-T

ENGLISH  
Original: FRENCH

Before Judges: Dennis C. M. Byron, presiding  
Gberdao Gustave Kam  
Vagn Joensen  
Registrar: Adama Dieng  
Date filed: 16 June 2008

JUDICIAL RECORDS ARCHIVES  
2008 JUL 21 A 9: 21  
[Signature]

**THE PROSECUTOR**

v.

**ÉDOUARD KAREMERA  
MATHIEU NGIRUMPATSE  
JOSEPH NZIRORERA**

**DECISION ON MATHIEU NGIRUMPATSE'S MOTION FOR JUDGEMENT OF ACQUITTAL**

(Rule 98 bis of the Rules of Procedure and Evidence)

Office of the Prosecutor:  
Don Webster  
Alayne Frankson-Wallace  
Iain Morley  
Gerda Visser  
Saïdou N'Dow  
Sunkari Ballah-Conteh  
Takesh Sendze  
Deo Mbuto

Counsel for Defence:  
Dior Diagne Mbaye and Félix Sow for Édouard Karemera  
Chantal Hounkpatin and Frédéric Weyl for Mathieu Ngirumpatse  
Peter Robinson and Patrick Niny Mayidika Ngimbi for Joseph Nzirorera

36077

## INTRODUCTION

1. In the instant case, Mathieu Ndirumpatse is accused of conspiracy to commit genocide, direct and public incitement to commit genocide, and genocide or, alternatively, complicity in genocide, rape and extermination, as crimes against humanity, in addition to murder and causing violence to the health and physical or mental well-being of persons, as serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.<sup>1</sup>
2. On 4 December 2007, the Prosecution closed its case, after filing a Motion for acceptance of exhibits. The Chamber then indicated that the Prosecution case would be considered closed once it had ruled on the Motion.<sup>2</sup> On 25 January 2008, the Chamber rendered a decision which effectively drew this stage of the case to a close, even if it had decided to recall some Prosecution witnesses at a later date.
3. Following an order issued by the Chamber on 24 December 2007, each of the three co-Accused filed a motion for judgement of acquittal on all the counts. The motions were all denied in a decision rendered on 19 March 2008.<sup>3</sup>
4. On 28 April 2008, the Defence for Mathieu Ndirumpatse filed a new motion for judgement of acquittal in respect of all the counts against him. In a confidential response, the Prosecutor objected to Mathieu Ndirumpatse's new motion for judgement of acquittal.

## DISCUSSION

### *Preliminary issues: confidentiality of the response filed by the Prosecutor*

5. The Prosecutor justified the confidential nature of his response by virtue of the fact that it is directly linked to the confidential motion to investigate Prosecution Witness BTH for false testimony. After considering this motion, the Chamber lifted any confidentiality as to the investigation procedure. Accordingly, the Chamber considers that the confidential nature of the Prosecutor's response is no longer justified.

### **Legal basis**

6. In its motion, the Defence for Mathieu Ndirumpatse contends that the Chamber requested the filing of the Accused's motion for judgement of acquittal beyond the scope of Article 98 *bis* of the Rules of Procedure and Evidence because the Prosecutor completed redirect examination of his last Prosecution witness only on 21 April 2008. The Defence argues that the Prosecutor was not able to establish beyond a reasonable doubt that Mathieu Ndirumpatse is guilty. In addition, the Defence for Mathieu Ndirumpatse contends that as the

<sup>1</sup> Amended Indictment, 3 April 2008.

<sup>2</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T, Scheduling Order (TC), 24 December 2007, para. 1.

<sup>3</sup> *Karemera et al.*, Decision on Motions for Judgement of Acquittal, 19 March 2008.

Prosecution case has completely broken down, the Chamber must address the issue of credibility and reliability of Prosecution witnesses.

7. Rule 98 *bis* of the Rules provides that if, after the close of the case for the Prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber shall order the entry of judgement of acquittal in respect of those counts.

8. In the instant case, the Prosecution closed its case on 25 January 2008. The Chamber reiterates that recalling Prosecution witnesses to testify after that date is not tantamount to reopening the case and does not therefore allow for the filing of a further motion for judgement of acquittal on the basis of Article 98 *bis* of the Rules. Indeed, the Chamber notes that the three co-Accused had access to all the Prosecution evidence on 25 January 2008. Consequently, the Defence is without recourse and the Chamber finds the motion inadmissible.

**FOR THESE REASONS, THE CHAMBER**

**DENIES** Mathieu Ndirumpatse's new motion for judgement of acquittal.

Arusha, 16 June 2008, done in French.

Dennis C. M. Byron  
Presiding Judge

Gberdao Gustave Kam  
Judge

Vagn Joensen  
Judge

[Seal of the tribunal]

