



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-I
6-8-2008
(36917 - 36915)

36917
Duffy

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: 6 August 2008

JUDICIAL SECTION ARCHIVE
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THE PROSECUTOR

v.

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

**DECISION ON "REQUETE DE LA DEFENSE DE M. NGIRUMPATSE EN
RETRAIT DE LA DEPOSITION DU TEMOIN GFJ ET DES PIECES
AFFERENTES"**

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Defence Counsel for Joseph Nzirorera
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INTRODUCTION

1. On 28 April 2008, Alain De Brouwer testified as a factual witness for Edouard Karemera; however, during his testimony, the Prosecution consistently argued that his answers amounted to expert testimony. The Chamber consequently made the following statement:

"We have special rules which govern the testimony of expert witnesses, and the rule is very simple. *Factual witnesses are not really allowed to give opinion evidence. A factual witness's testimony which is based on research that that factual witness has done and that is presented to the court as though it is true is not part of our fact-finding process.*" (Emphasis added.)¹

Mathieu Ngirumpatse has seized on this statement, and filed a motion requesting the Chamber to exclude the testimony and related evidence of factual Prosecution Witness GFJ, who testified in 2005, because GFJ answered 22 questions from the Prosecutor that could be seen as eliciting opinion evidence.² Ngirumpatse has also requested that the Chamber issue a statement to the effect that GFJ was actually asked to testify as an expert by the Prosecution, in direct contravention to the rules for expert testimony.³

2. The Prosecution opposes the motion in its entirety.⁴

DELIBERATIONS

The parameters of factual witness testimony

3. On 28 April 2008, the Chamber made the following statement to Alain De Brouwer, in addition to the statement seized on by Mathieu Ngirumpatse:

"Now, you have not been set up as an expert. In fact, you have heard Mr. Sow say today that he is relying on you as a factual witness. What that means is that the testimony that you should give is the testimony that *emanates from your personal activity, your personal experience, not the information you gathered as a researcher.*" (Emphasis added.)⁵

Indeed, as the Trial Chamber in the *Ndindiliyimana* case has also stated, "a factual witness should testify only to things he knows by reason of use of his five senses."⁶

¹ T. 28 April 2008, p. 59.

² Requete de la Defense de M. Ngirumpatse en Retrait de la Deposition du Temoin GFJ et des Pieces Afferees, filed on 16 June 2008.

³ *Ibid.*

⁴ Prosecutor's Response to Ngirumpatse's Motion to Exclude Testimony of GFJ, filed on 23 June 2008.

⁵ T. 28 April 2008, p. 59.

⁶ *The Prosecutor v. Augustin Ndindiliyimana, Augustin Bizimungu, Francois-Xavier Nzuwonemeye, and Innocent Sogohutu*, Case No. ICTR-00-56-T, ("*Ndindiliyimana et al.*"). Decision on the Prosecutor's Motion Opposing the Testimony of Witness DE4-30 as a Factual Witness (TC), 16 May 2007, para. 8.

4. Factual witnesses can also express opinions, so long as they emanate from personal experience. Where a party chooses to call a highly qualified or skilled individual as a factual, rather than an expert witness, it implicitly makes a choice to limit the witness's testimony to matters which he personally saw, heard, or experienced.⁷


Did Witness GFJ give expert witness testimony?

5. Mathieu Ngirumpatse argues that Witness GFJ testified as an expert witness, despite the fact that he was called as a factual witness, because he answered twenty-two questions from the Prosecutor that could be seen as eliciting opinion evidence concerning the Rwandan genocide. The Chamber notes that GFJ is a Rwandan national who: (1) actually lived through the events in Rwanda that occurred from 1990-1994; (2) worked for the MRND, and participated in meetings, rallies, and activities; and (3) personally knew and frequently spoke with Mathieu Ngirumpatse.⁸ Therefore, the Chamber finds that CFJ's opinion testimony regarding the events in Rwanda from 1990-1994 is proper because it emanated from his personal experience and activities.


FOR THESE REASONS, THE CHAMBER

- 1. DENIES the motion in its entirety.


Arusha 6 August 2008, done in English.


Dennis C. M. Byroop

Residing Judge


Gberdao Gustave Kam

Judge
(absent during signature)


Vagn Joensen

Judge
(absent during signature)

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⁷ *Vindiliyimana et al.*, Decision on the Prosecutor's Motion Opposing the Testimony of Witness DE4-30 as a Factual Witness (TC) 16 May 2007, para. 9.
⁸ I. 20 September 2005.