



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:** 6 August 2008

**THE PROSECUTOR**

v.

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

**CONSOLIDATED DECISION ON JOSEPH NZIRORERA'S MOTION TO RECALL  
WITNESS GBU AND "REQUETE DE M. NGIRUMPATSE VISANT AU RAPPEL DU  
TEMOIN GBU"**

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## INTRODUCTION

1. In December 2006, Prosecution Witness GBU testified that Juvenal Kajelijeli had: (1) participated in a meeting at Joseph Nzirorera's mother's house on the morning of 7 April 1994 at which massacres had been prepared;<sup>1</sup> (2) ordered the massacre of Tutsis in Mukingo commune;<sup>2</sup> and (3) ordered the Interahamwe to massacre the Tutsis at the Ruhengeri Court of Appeal.<sup>3</sup> However, after his testimony had been completed, the Prosecution disclosed a letter written by GBU dated 16 October 2006, which recanted those very allegations.<sup>4</sup> Additionally, in April 2008, Prosecution Witness BTH testified during his recall that he and GBU had fabricated their testimony against Joseph Nzirorera and others.

2. On 9 June 2008, Joseph Nzirorera filed a motion to recall GBU for further cross-examination on the contents of the letter and the allegations made by BTH during his recall.<sup>5</sup> Mathieu Ngirumpatse also filed a motion to recall GBU on 19 June 2008, citing the same grounds as Nzirorera.<sup>6</sup>

3. The Prosecution opposes Nzirorera's motion in its entirety, but did not respond to Ngirumpatse's motion.<sup>7</sup>

## DELIBERATIONS

### *Standard for recalling a witness*

4. The party seeking to recall a witness must demonstrate good cause. A Chamber assesses whether good cause exists by: (1) considering the purpose for which the witness will testify; and (2) examining the reasons why the witness was not questioned earlier on those matters.<sup>8</sup> If the defence discovers inconsistent statements pertaining to a witness who has already testified, fairness to the accused justifies recalling that witness.<sup>9</sup>

5. The Prosecution contends that Joseph Nzirorera has not demonstrated good cause to recall GBU because his motion was filed over a year after the letter at issue was disclosed. According to the Prosecution, this delay indicates that there is no actual controversy provoked by GBU's letter. However, the Chamber notes that the Prosecution does not allege that Nzirorera was aware of the letter before GBU testified. Accordingly, the timing of Nzirorera's application is less significant. Moreover, as Nzirorera states in his reply, he is not obligated to file motions to recall a witness before all grounds for recalling the witness are developed.

<sup>1</sup> T. 4 December 2006, p. 23.

<sup>2</sup> T. 4 December 2006, p. 24.

<sup>3</sup> T. 4 December 2006, p. 29.

<sup>4</sup> Confidential Annex "B" to Joseph Nzirorera's Motion to Recall Witness GBU ("Nzirorera's Motion"), filed on 6 June 2008.

<sup>5</sup> Nzirorera's Motion; Reply Brief: Joseph Nzirorera's Motion to Recall Witness GBU, filed 17 June 2008; Supplemental Submission Re: Joseph Nzirorera's Motion to Recall Witness GBU, filed 7 July 2008.

<sup>6</sup> Requete de M. Ngirumpatse Visant au Rappel du Temoin GBU, filed on 19 June 2008.

<sup>7</sup> Prosecutor's Response to Nzirorera's Motion to Recall Witness GBU, filed on 16 June 2008.

<sup>8</sup> *The Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Ahmed Mbonnyunkiza (TC), 25 September 2007, para. 5.

<sup>9</sup> *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Second Motion to Exclude Testimony of Witness AXA and Edouard Karemera's Motion to Recall the Witness (TC), 4 March 2008, para. 30.

6. The Prosecution also asserts that Joseph Nzirorera's motion is premature, because the *amicus curiae* appointed by the Chamber to investigate BTH's testimony has not yet delivered any results to the parties. The Prosecution argues that there may be no need to recall GBU if the *amicus curiae* concludes that BTH's recantation in April 2008 was deliberately false. However, the Chamber recalls that the Prosecution specifically requested that the *amicus curiae* not investigate BTH's statements concerning the testimony of other witnesses.<sup>10</sup>

7. Under the first prong of the test for good cause to recall a witness, the Chamber considers that the purpose of GBU's testimony justifies recalling him for further cross-examination. The letter dated 16 October 2006 is highly relevant to GBU's credibility because it specifically recants some of his prior allegations against Joseph Nzirorera. Moreover, BTH's claim that he and GBU fabricated testimony against Nzirorera and others is also highly relevant to GBU's credibility.

8. Joseph Nzirorera has also satisfied the second prong of the test for good cause to recall a witness. After examining the reasons why GBU was not called earlier on those matters, the Chamber is satisfied that Nzirorera's request that GBU be recalled at this stage has been made in good faith. Accordingly, the Chamber finds that Nzirorera has demonstrated good cause in moving to recall GBU, and grants the motion in its entirety.

9. Because the Chamber has granted the recall of Witness GBU based on Joseph Nzirorera's motion, it deems Mathieu Ngirumpatse's motion to recall GBU for identical reasons moot.

**FOR THESE REASONS, THE CHAMBER**

**I. GRANTS** Joseph Nzirorera's motion in its entirety; and

**II. DISMISSES** Mathieu Ngirumpatse's motion as moot.

Arusha, 6 August 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge  
(absent during signature)

Judge  
(absent during signature)

[Seal of the Tribunal]

<sup>10</sup> Prosecutor's Motion Pursuant to Rule 91 to Investigate BTH for False Testimony, filed confidentially on 22 April 2008, paras. 7-8.