



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: 27 October 2008

THE PROSECUTOR

v.

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

CONFIDENTIAL

**DECISION ON JOSEPH NZIRORERA'S MOTION TO ADMIT TESTIMONY OF
COME BIZIMUNGU**

Rules 92 bis (D) and 89 (C) of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 7 August 2008, Joseph Nzirorera filed a motion to admit testimony of Come Bizimungu from the *Bagosora et al.* trial *in lieu* of his oral testimony.¹ In the testimony at issue, Bizimungu stated that he had not attended a meeting of authorities at Butotori Camp, and that he was not a member of a secret communications network or death squad.² Nzirorera contends that this testimony refutes the testimony of Prosecution Witness ZF in this case.

2. Joseph Nzirorera states that he is willing to seek to admit Bizimungu's prior testimony as a means for shortening the length of his defence case, rather than call him as a live witness, on the express condition that the Chamber give the testimony the same weight as if Bizimungu had testified live.

3. The Prosecution leaves the matter regarding the admission of the trial transcripts to the discretion of the Chamber; however, it requests the opportunity to cross examine the witness if the testimony is admitted.³ The Prosecution opposes Joseph Nzirorera's condition that the testimony be given the same weight as if Bizimungu had testified live.⁴

DELIBERATIONS

4. Rule 92*bis* (D) of the Rules of Procedure and Evidence states that "[a] Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused." In addition, the Chamber must be satisfied that the transcripts at issue are relevant and have probative value under Rule 89(C).⁵ Under Rule 92*bis* (E), the Chamber has the discretion to admit, in whole

¹ Joseph Nzirorera's Motion to Admit Testimony of Come Bizimungu, ("Nzirorera's Motion"), filed on 7 August 2008; Reply Brief: Joseph Nzirorera's Motion to Admit Testimony of Come Bizimungu, ("Nzirorera's Response"), filed on 12 August 2008.

² Annex "A" to Nzirorera's Motion, pp. 51,57.

³ Prosecutor's Response to Joseph Nzirorera's Motion to Admit Testimony of Come Bizimungu, ("Prosecution's Response"), filed on 11 August 2008.

⁴ *Ibid.*

⁵ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Decision on Admission of Transcript of Prior Testimony of Antonius Maria Lucassen (TC), 15 November 2005, para. 3.

or in part, the evidence of a witness in the form of a transcript *in lieu* of oral testimony, and to decide whether or not to require the witness to appear for cross-examination.⁶

5. This Chamber has already held that a statement of a witness that he did not attend the Butotori Camp meeting, which contradicts the testimony of a Prosecution witness, goes to proof of a matter other than the acts and conduct of the accused and that it is both relevant and probative under Rule 89(C).⁷ Because Come Bizimungu's testimony concerns his attendance at the Butotori Camp meeting, and contradicts the testimony of Prosecution Witness ZF, the Chamber finds that Bizimungu's testimony can be admitted under Rule 92bis (D).

6. The Chamber notes that the Prosecution conducted an extensive cross-examination of Come Bizimungu in the *Bagosora* trial, which is included in the transcript sought to be admitted. Given the limited scope of Come Bizimungu's testimony, and that the Prosecution has not demonstrated a need for further cross-examination, the Chamber denies the Prosecution's request to cross-examine the witness.

7. Joseph Nzirorera claims that he will call Come Bizimungu as a live witness if the Chamber refuses to assert that the relevant portions of the transcript, if admitted, will be given the same weight as live testimony. Although Nzirorera relies on the Chamber's Decision to Admit Statements of Augustin Karara⁸ pursuant to Rule 92(A) in support of this ultimatum, the Chamber finds that this reliance is misplaced.

8. The credibility of a witness is usually most telling during cross-examination because the Chamber can observe his demeanour during adversarial, live questioning. In the Karara decision, the Chamber agreed to give written statements the same weight as live testimony, which had not been challenged by cross-examination, because the Prosecution, which was represented when Augustin Karara was interviewed by the Defence, did not request to cross-examine him. However, in this instance, the Prosecution has already cross-examined Come

⁶ *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Admission of Transcript of Prior Testimony of Antonius Maria Lucassen (TC), 15 November 2005, para. 4.

⁷ *Ibid.*

⁸ Nzirorera's Motion, para. 7, where he discusses: *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Admit Statements of Augustin Karara (TC), 9 July 2008, para. 18.

Bizimungu, and has requested that it be allowed to cross-examine him again on the content of the transcripts, which indicates that it challenges his credibility.

9. Thus, the Chamber cannot assert at this stage in the proceedings that the transcripts at issue will be given the same weight as live testimony. The Chamber reminds Joseph Nzirorera that the weight it will eventually accord Come Bizimungu's testimony, as with all other evidence, can only be decided at the end of the trial after hearing the totality of the evidence.⁹

10. It is up to Joseph Nzirorera to decide whether he will submit Come Bizimungu's testimony under Rule 92*bis*, or call him as a live witness.

FOR THESE REASONS, THE CHAMBER

GRANTS Joseph Nzirorera's motion in part.

Arusha, 27 October 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

⁹ *Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Admit Statements of Augustin Karara (TC), 9 July 2008, para. 18.