

ICTR-98-44-T  
10-11-2008  
(38248-38246)

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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:** 10 November 2008

JUDICIAL RECORDS SECTION  
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**THE PROSECUTOR**

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION TO ADMIT TESTIMONY OF  
WITNESS WFP-1**

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

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## INTRODUCTION

1. On 21 June 2006, Prosecution Witness XBM testified that he attended a ceremony at Mt. Muhe in September 1993 to celebrate the laying of the foundation for an RTLM radio antenna.<sup>1</sup> He also testified that Jean-Bosco Barayagwiza and Colonel Anatole Nsengiyumva were present, and that Barayagwiza promised to supply weapons to the *Impuzamugambi* to protect themselves against the Tutsi.<sup>2</sup> Witness XBM also stated that Nsengiyumva had said that the population needed to track down the enemy within the population while the army fought the enemy at the front.<sup>3</sup>

2. On 18 August 2008, Joseph Nzirorera filed a motion, pursuant to Rule 92bis (D) of the Rules of Procedure and Evidence, to admit portions of the testimony of Witness WFP-1 in the *Bagosora et al.* trial, where, according to Nzirorera, the witness contradicts XBM's testimony in this trial.<sup>4</sup> In his open session testimony, WFP-1 stated that no ceremony for the erection of an RTLM radio antenna was ever held at Mt. Muhe,<sup>5</sup> whereas in his closed session testimony, he explained why he was in a position to know whether such a meeting had ever taken place.<sup>6</sup> The transcripts of WFP-1's testimony show that he was cross-examined by the Prosecution.<sup>7</sup>

3. Joseph Nzirorera requests that the transcript of the open session testimony of Witness WFP-1 be admitted as a public exhibit, and that the transcript of the closed session testimony be admitted as an exhibit under seal, along with WFP-1's personal information sheet.

4. 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.<sup>8</sup>

## DELIBERATIONS

5. Rule 92bis (D) 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).<sup>9</sup> Under Rule 92bis (E), the Chamber has the discretion to admit, in whole or in part, the evidence of a witness in the form

<sup>1</sup> T. 21 Jun. 2006, p. 41.

<sup>2</sup> T. 21 Jun. 2006, p. 43.

<sup>3</sup> *Ibid.*

<sup>4</sup> Joseph Nzirorera's Motion to Admit Testimony of Witness WFP-1, filed on 18 August 2008.

<sup>5</sup> Annex "A" to Nzirorera's Motion.

<sup>6</sup> Confidential Annex "B" to Nzirorera's Motion.

<sup>7</sup> Annex "A" to Nzirorera's Motion.

<sup>8</sup> Prosecutor's Response to Joseph Nzirorera's Motion to Admit Testimony of Witness WFP-1, filed on 22 August 2008.

<sup>9</sup> *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse 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.

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of a transcript *in lieu* of oral testimony, and to decide whether or not to require the witness to appear for cross-examination.<sup>10</sup>

6. The Chamber finds that the transcripts designated by Joseph Nzirorera go to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment because the Indictment does not allege that Nzirorera attended a meeting at Mt. Muhe. Further, the Chamber concludes that the transcripts are probative and relevant because they have the potential to impeach the credibility of Prosecution Witness XBM. The Chamber also notes that the Prosecution has not disputed that they are relevant and of probative value. Thus, the Chamber finds the transcripts at issue admissible under Rule 92*bis* (D).

7. Given the limited scope of WFP-1's testimony, which Joseph Nzirorera seeks to introduce, considering that the purpose of Rule 92*bis* is to streamline the presentation of evidence, and noting that the Prosecution has already cross-examined WFP-1, the Chamber denies the Prosecution's request to cross-examine the witness.

**FOR THESE REASONS, THE CHAMBER**

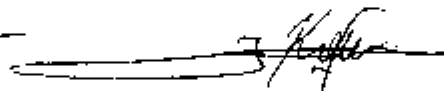
- I. **GRANTS** Joseph Nzirorera's motion in its entirety; and
- II. **REQUESTS** the Registry to admit Annex "A" to Nzirorera's Motion as a public exhibit, and Annex "B" to Nzirorera's Motion, and WFP-1's personal information sheet as exhibits under seal.

Arusha, 10 November 2008, done in English.



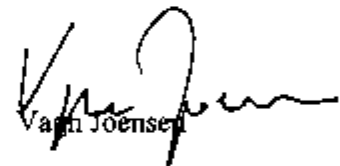
Dennis C.M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vágn Joensen

Judge

[Seal of the Tribunal]



<sup>10</sup> *Karemera et al.*, Decision on Admission of Transcript of Prior Testimony of Antonius Maria Lucassen (TC), 15 November 2005, para. 4.