



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
13-2-2009
(45064-45055)

45064
Duf

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: 13 February 2009

JUDICIAL AUTHORITY
2009 FEB 13 11:46
[Signature]

THE PROSECUTION

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION TO ADMIT DOCUMENTS
OBTAINED FROM THE RPF ARCHIVES IN KIGALI**

Rule 89(C) of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera

Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse

Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera

Peter Robinson and Patrick Nimy Mayidika Ngimbi

[Signature]

INTRODUCTION

1. On 21 January 2009, Joseph Nzirorera filed a motion pursuant to Rule 89(C) of the Rules of Procedure and Evidence ("Rules") to have the Chamber admit 19 documents from the RPF Archives in Kigali into evidence as defence exhibits ("Documents").¹ Nzirorera submits that all of the Documents pertain to the position of President Juvénal Habyarimana and the MRND leadership on the preparation and implementation of the Arusha Accords.² Nzirorera argues that because the Chamber has admitted similar types of documents in these proceedings, the Documents should also be admitted.³ Matthieu Ndirumpatse supports the Motion in its entirety.⁴

2. The Prosecution filed a response on 26 January 2009, leaving the matter to the discretion of the Chamber, but also offered comments on whether the Documents meet the criteria for admissibility under Rule 89(C).⁵

DELIBERATIONS

Legal Principles

3. Rule 89(C) of the Rules provides that a Chamber "may admit any relevant evidence it deems to have probative value". In order to establish that evidence is relevant, the moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.⁶ To establish the probative value of the evidence, the moving party must show that the evidence tends to prove or disprove an issue.⁷

4. A factor in the assessment of the relevance and probative value of evidence is the requirement that it be *prima facie* credible; that is, it must have sufficient indicia of

¹ Joseph Nzirorera's Motion to Admit Documents Obtained from the RPF Archives in Kigali, filed 21 January 2009 ("Motion"). The documents are attached to the Motion as Annexes A to S.

² Motion, para. 2.

³ Motion, paras. 2 and 4.

⁴ *Reponse de M. Ndirumpatse a la Requete de Joseph Nzirorera en Admission de Pieces a Conviction*, filed 26 January 2009.

⁵ Prosecution's Response to Joseph Nzirorera's Motion to Admit Documents Obtained from the RPF Archives in Kigali, filed 26 January 2009 ("Prosecution Response").

⁶ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on the Prosecution's Motion for Admission of Certain Exhibits into Evidence, 22 January 2008 ("Decision on Admission of Certain Exhibits"), para. 6; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira, 26 March 2008 ("Decision to Admit Ruhigira Documents"), para. 3.

⁷ *Karemera et al.*, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ndirumpatse, 2 November 2007, para. 4 (incorrectly marked as para. 2); *Karemera et al.*, Interim Order on the Prosecutor's Motion for Admission of Documents, 8 August 2007, para. 7 (and cases cited therein).

reliability.⁸ While a Chamber always retains the competence under Rule 89(D) to request verification of the authenticity of evidence obtained out of court, “to require absolute proof of a document’s authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Sub-rule 89(C).”⁹ In this regard, the Chamber considers that it is now well settled that documents need not be recognised by a witness to be considered as having probative value.¹⁰

5. In addition, the admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, or even whether its contents are truthful or accurate,¹¹ which is an issue to be decided by the Chamber after hearing the totality of the evidence.¹²

Authenticity

6. The Chamber notes that Joseph Nzirorera has indicated where the Documents were obtained, in the form of an affidavit from his investigator affirming that he obtained originals of the documents from the RPF archives in Kigali between May and October 2008.¹³ Further, the Documents bear dates, and for the most part have official stamps and/or signatures that support their authenticity.

7. Although the Prosecution points out that two of the Documents are unsigned and bear no official seals, and submits that the parties to the proceeding should be aware that some documents contained in the RPF archives are copies, it concedes that the affidavit from Joseph Nzirorera’s investigator satisfies the criteria of authenticity.¹⁴ In these circumstances, the Chamber finds that Nzirorera has established that the Documents bear sufficient indicia of reliability to the meet the threshold standard for admissibility.

⁸ *The Prosecutor v. Delalic and Delic*, Case No. IT-96-21 (“*Delalic et al.*”), Decision on Application of Defendant Zejnil Delalic for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998 (“Decision on Admissibility”), para. 20; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41 (“*Bagosora et al.*”), Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004, para. 8.

⁹ *Delalic et al.*, Decision on Admissibility, para. 20.

¹⁰ *Karemera et al.*, Decision on Admission of Certain Exhibits, para. 7 (and cases cited therein); *Karemera et al.*, Decision on the Prosecution Motion for Admission Into Evidence of UNAMIR Documents, 30 October 2007 (“Decision on Admission of UNAMIR Documents”), para. 6.

¹¹ *Bagosora et al.*, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C), 25 May 2006, para. 4.

¹² *Karemera et al.*, Decision on Admission of UNAMIR Documents, para. 7; *Karemera et al.*, Decision on Admission of Certain Exhibits, para. 6; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28, 31 January 2005, para. 12.

¹³ Motion, Annex T.

¹⁴ Prosecution Response, para. 7.

Relevance and Probative Value

8. Joseph Nzirorera first seeks to admit 14 documents which he asserts are “relevant to show that the President and MRND were committed to the peace-building and democratisation process in Rwanda and did not desire to exterminate the Tutsi.”¹⁵

9. The Chamber notes that Annex I is a letter from President Mwinyi of Tanzania to President Habyarimana concerning the Arusha peace negotiations. As such, while it may reflect the views of President Mwinyi on the peace negotiations, it cannot serve to establish the commitment or desires of President Habyarimana or the MRND; indeed the letter makes no mention of these precise issues. Consequently, the Chamber finds that Annex I does not have sufficient probative value to be admitted into evidence.

10. With respect to the other documents, the Chamber notes that 11 are letters from President Habyarimana to various heads of state and international organizations and one is a speech purportedly given by President Habyarimana at a summit of the French-speaking world in October 1993. As the Prosecution accepts, these documents reflect the official attitude of the President concerning the peace process, which is an issue in the proceedings.¹⁶

11. The Chamber notes that the Prosecution submits that these documents may have *de minimus* sufficient relevance and probative value to be admitted into evidence.¹⁷ The Chamber also recalls that it has previously found that documents which reflect the attitude of President Habyarimana and the MRND concerning the Arusha Accords have sufficient relevance and probative value to be admitted into evidence.¹⁸

12. However, in light of the fact that Joseph Nzirorera has already tendered exhibits on this issue, the Chamber has an obligation to determine if the admission of additional, similar, evidence would serve the interests of justice. As it has previously stated, the Chamber has a duty to ensure the fair and expeditious conduct of the proceedings, which includes keeping the case at a manageable size.¹⁹ Consequently, the parties are reminded to be selective in their tendering of exhibits.²⁰

¹⁵ Motion, para. 5; Annexes A, B, C, D, E, G, H, I, J, K, M, P, Q and R.

¹⁶ Prosecution Response, para. 8.

¹⁷ Prosecution Response, para. 8.

¹⁸ See *Karemera et al.*, Decision to Admit Ruhigira Documents, paras. 4 and 10.

¹⁹ *Karemera et al.*, Interim Order for the Prosecution to Identify Relevant and Probative Passages of Certain Materials it Intends to Tender into Evidence Under Rule 89(C) of the Rules of Procedure and Evidence, 8 August 2007, para. 12.

²⁰ *Prosecutor v. Prlic et al.*, Case No. IT-04-74-PT, Revised Version of the Decision Adopting Guidelines on Conduct of Trial Proceedings, 28 April 2006, para. 8.

13. The Chamber finds that while similar documents have been admitted in these proceedings,²¹ they tend to have emanated from persons other than President Habyarimana.²² Accordingly, the Chamber is satisfied that these documents meet the threshold for admissibility as relevant to the President's official position regarding the peace negotiations over the period of July 1992 to October 1993. The Chamber therefore admits Annexes A, B, C, D, E, G, H, J, K, M, P, Q and R into evidence.

14. Joseph Nzirorera next seeks to admit three documents which he asserts are relevant "to show that the representatives of Rwandan armed forces were committed to the peace-building process in Rwanda and that measures taken by the Rwandan government were in response to violations by the RPF."²³

15. Annex F is a letter from the Rwandan Minister of Defence to the Minister of Foreign Affairs concerning purported ceasefire violations by the RPF from 29 September to 1 October 1992. Annex N is a letter from President Habyarimana to the Secretary General of the Organization of African Unity concerning purported ceasefire violations by the RPF on 8 February 1993. Annex O is a press release dated 2 March 1993 regarding meetings held by President Habyarimana to address the resumption of the war after alleged ceasefire violations by the RPF.

16. The Chamber accepts that these documents are relevant to the general context of events, the existence of a joint criminal enterprise and in particular the count of conspiracy to commit genocide. The Chamber therefore finds that Annexes F, N and O have sufficient relevance and probative value to be admitted into evidence.

17. Third, Joseph Nzirorera seeks to admit one document, Annex L, which he asserts is relevant "to show the commitment of the President to the Arusha Peace Process. The date of 28 January 1993 is also relevant to cast doubt upon the testimony of Witness GOB that he and Mathieu Ndirumpatse attended a rally together on that day in Gitarama."²⁴

18. Annex L is an unsigned transcript of a speech purportedly given by President Habyarimana during an MRND meeting at Amahoro Stadium on 28 January 1993. While the Chamber notes the Prosecution's submission that the unsigned speeches may not reflect what

²¹ See, for example, Exhibit DNZ 386.

²² See Exhibits DNZ 427-432.

²³ Motion, para. 5; Annexes F, N and O.

²⁴ Motion, para. 5; Annex L.

President Habyarimana actually said,²⁵ it finds that this is a matter properly considered when determining the weight of the evidence, rather than its admissibility.

19. Given that the speech discusses the democratization process in Rwanda, and mentions safeguarding peace and unity, the Chamber finds that it is relevant to President Habyarimana's attitude towards the peace process. As this matter could provide context to the count of conspiracy to commit genocide, the Chamber finds that Annex L has sufficient relevance and probative value to be admitted into evidence.

20. Finally, Joseph Nzirorera seeks to admit one document, Annex S, which he asserts is relevant "to show that the parties had agreed upon the installation of the Broad-Based Transitional Government and it was the RPF, rather than the MRND, which blocked the implementation of the Arusha Accords."²⁶

21. Annex S is a letter from Prime Minister Agathe Uwilingiyimana to President Habyarimana referring to his agreement to put in place the Broad-Based Transitional Government ("BBTG"). The Prime Minister asks the President to receive the oath of members of the BBTG and deputies of the Transitional National Assembly on 25 March 1994.

22. The Chamber accepts that the letter relates to the implementation of the BBTG and therefore is relevant contextually to the events charged in the Indictment.²⁷ Annex S is therefore admitted into evidence.


²⁵ Prosecution Response, para. 10.
²⁶ Motion, para. 5; Annex S.
²⁷ Decision on Admission of Certain Documents, para. 61.

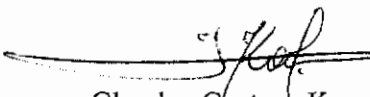
45058

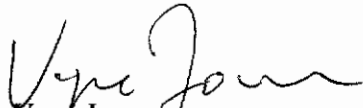
FOR THE ABOVE REASONS, THE CHAMBER.

- I. **GRANTS**, in part, Joseph Nzirorera's Motion;
- II. **ADMITS** into evidence Annexes A, B, C, D, E, F, G, H, J, K, L, M, N, O, P, Q, R, S;
and,
- III. **REQUESTS** the Registry to assign these documents an exhibit number in the instant case.

Ausha, 13 February 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

