



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-1  
17-2-2009  
(45128-45126)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

45128  
H/m

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 17 February 2009

**THE PROSECUTOR**

v.

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

JUDICIAL RECORDS/ARCHIVES  
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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR CERTIFICATE OF SAFE CONDUCT**

*Rule 54 of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. On 19 January 2009, Joseph Nzirorera moved the Chamber, under Rules 54 and 75 of the Rules of Procedure and Evidence, to issue a certificate of safe conduct for certain Defence witnesses listed in a confidential annex to his motion.<sup>1</sup> The Prosecution leaves the matter to the discretion of the Chamber, but sets forth several suggestions, which the Chamber will address below.<sup>2</sup>

## DELIBERATIONS

2. Rule 54 states that, at the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants, and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial. If a witness fears being arrested and extradited to the Rwandan authorities, it is appropriate for a Chamber to *proprio motu* issue an order of safe conduct for that witness.<sup>3</sup>

3. Although Joseph Nzirorera has requested certificates of safe conduct for his witnesses under Rule 75 in addition to Rule 54, the Chamber does not find it necessary to authorize the certificates under Rule 75, as it is already established that they can be issued under Rule 54.

4. The Prosecution submits that Joseph Nzirorera should provide the Chamber with documentation supporting his assertion that the witnesses are actually subject to prosecution in Rwanda.<sup>4</sup> However, the Chamber notes that this is not a requirement for the issuance of a certificate of safe conduct. A witness need only fear that he will be arrested.<sup>5</sup>

5. The Prosecution also claims that Joseph Nzirorera has not provided the Chamber or the Prosecution with any information about the current location of the witnesses for whom he seeks the certificates of safe conduct.<sup>6</sup> However, Nzirorera has submitted a confidential annex to his reply brief, which indicates the current location of each of the witnesses at issue.<sup>7</sup>

6. Noting that the witnesses at issue in Joseph Nzirorera's motion fear being arrested and extradited to the Rwandan authorities, the Chamber grants the motion, and issues certificates of safe conduct for all of the witnesses.

7. However, the Chamber recalls that an order for safe conduct is limited to immunity from prosecution for crimes that are within the jurisdiction of the ICTR, and which were

<sup>1</sup> Joseph Nzirorera's Motion for Certificate of Safe Conduct, filed on 19 January 2009; Confidential Annex to Joseph Nzirorera's Motion for Certificate of Safe Conduct, filed on 19 January 2009; Reply Brief: Joseph Nzirorera's Motion for Certificate of Safe Conduct, filed on 26 January 2009.

<sup>2</sup> Prosecutor's Response to Joseph Nzirorera's Motion for Certificate of Safe Conduct, filed on 23 January 2009, ("Prosecutor's Response").

<sup>3</sup> *Prosecutor v. Nyiramasuhuko et al.*, ICTR-97-21-T, Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte – Under Seal – Motion for Additional Protective Measures for Defence Witness BK (TC), 15 June 2005, para. 35.

<sup>4</sup> Prosecutor's Response, para. 8.

<sup>5</sup> *Prosecutor v. Nyiramasuhuko et al.*, ICTR-97-21-T, Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte – Under Seal – Motion for Additional Protective Measures for Defence Witness BK (TC), 15 June 2005, para. 34.

<sup>6</sup> Prosecutor's Response, para. 9.

<sup>7</sup> Confidential Annex "B" to Joseph Nzirorera's Motion for Certificate of Safe Conduct, filed on 26 January 2009.

committed before coming to the ICTR.<sup>8</sup> Additionally, the Chamber notes that this immunity is only valid for the time during which the witness is present at the ICTR to give testimony.<sup>9</sup>

**FOR THESE REASONS, THE CHAMBER**

**I. GRANTS** the Motion in its entirety;

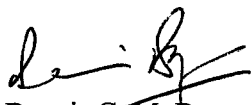
**II. ORDERS** pursuant to Rule 54, that the witnesses shall not be prosecuted, detained or subjected to any other restriction of their personal liberty, for acts or convictions falling within the jurisdiction of the Tribunal, during their presence in Tanzania and their travel between that country and their places of residence, which are listed in the confidential annex to Joseph Nzirorera's reply;

**III. DECIDES** that such immunity shall take effect from the date of the present Decision and shall remain in force for a maximum of seven days following the completion of the witnesses' testimony;

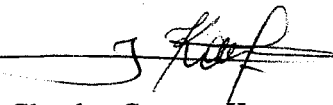
**IV. DECIDES**, moreover, that should illness prevent the witnesses from leaving Tanzania or should they be detained for an offence they may have committed during their stay in Tanzania, the seven-day time limit shall start to run from the time they are again able to travel or have been released;

**V. DECIDES** that the witnesses may travel only between Tanzania's point of entry and exit and their place of residence, within a limited radius around their place of residence in Tanzania, and between such place and the Tribunal.

Arusha, 17 February 2009, done in English.

  
Dennis C. M. Byron

Presiding Judge

  
Gberdao Gustave Kam

Judge

  
Vagn Joensen

Judge

[Seal of the Tribunal]



<sup>8</sup> *Prosecutor v. Nyiramasuhuko et.al.*, ICTR-97-21-T, Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte – Under Seal – Motion for Additional Protective Measures for Defence Witness BK (TC), 15 June 2005, para. 34.

<sup>9</sup> *Ibid.*