

ICTR-98-44-T
(45437-45434)

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24-03-2009



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: 24 March 2009

THE PROSECUTION

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVES
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Joseph Nzirorera

**DECISION ON RUTAGANDA'S MOTION FOR ACCESS TO CLOSED SESSION
TESTIMONY AND SEALED EXHIBITS OF WITNESS "AWE"**

Rule 75 of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
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Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
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Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. The Appeals Chamber confirmed Georges Rutaganda's sentence of life imprisonment on 26 May 2003. On 4 March 2009, Georges Rutaganda applied to this Chamber to have the closed session transcripts and the sealed exhibits admitted by this Chamber in relation to the testimony of Witness AWE in the *Karemera et al.* case.¹ Joseph Nzirorera supports the Motion.²
2. The Prosecution opposes the Motion.³

DELIBERATIONS

3. A party to a case before this Tribunal is entitled to seek material from another case to assist it in the preparation of its case.⁴ Pursuant to Rule 75(F)(i) of the Rules of Procedure and Evidence ("Rules"), where protective measures have been ordered in any proceedings before the Tribunal, they continue to have effect *mutatis mutandis* in any other proceedings before it, unless and until they are rescinded, varied or augmented.
4. Where a party requests access to confidential material from another case, such material must be identified or described by its general nature and a legitimate forensic purpose for accessing it must be demonstrated.⁵ Consideration must be given to the material sought,

¹ Rutaganda's Motion for Access to Closed Session Testimony and Sealed Exhibits of Witness « AWE » in *Karemera et al.*, dated 2 March 2009 and filed on 4 March 2009.

² Joseph Nzirorera's Response to Rutaganda Access Motion, filed on 9 March 2009.

³ Prosecutor's Response to Rutaganda's motion for Access to Closed Session Testimony and Sealed Exhibits of Witness "AWE" in *Karemera et al.*, filed on 11 March 2009.

⁴ *Ferdinand Nahimana v. the Prosecutor*, Case No. ICTR-99-52-A, Décision sur les requêtes de Ferdinand Nahimana aux fins de divulgation d'éléments en possession du Procureur et nécessaires à la défense de l'appelant et aux fins d'assistance du greffe pour accomplir des investigations complémentaires en phase d'appel, 8 December 2006, para. 12; *the Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-R75, and *the Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-R75, Decision on Eliézer Niyitegeka's Appeal Concerning Access to Confidential Materials in the *Muhimana* and *Karemera et al.* Cases, 23 October 2008, para. 21.

⁵ *Ferdinand Nahimana v. the Prosecutor*, Case No. ICTR-99-52-A, Décision sur les requêtes de Ferdinand Nahimana aux fins de divulgation d'éléments en possession du Procureur et nécessaires à la défense de l'appelant et aux fins d'assistance du greffe pour accomplir des investigations complémentaires en phase

which may be demonstrated by showing the existence of a nexus between the requesting party's case and the case from which such material is sought.⁶ A Chamber must be satisfied that the requesting party has established that this material is likely to assist its case materially or at least that there is a good chance that it would. Once it is determined that confidential material filed in another case may materially assist an applicant, the Chamber shall determine which protective measures shall apply to the material, as it is within the Chamber's discretionary power to strike a balance between the rights of a party to have access to material to prepare its case and guarantying the protection and integrity of confidential information.⁷

5. George Rutaganda submits that Prosecution Witness AWE, a protected witness in the *Karemera et al.* case, testified regarding events in Cyahafi in 1994 and that he provided a lot of information in respect to those events and those related to his conduct. He submits consequently that the testimony of Witness AWE is likely to assist him materially or at least there is a good chance that it would.⁸

6. Presently, Georges Rutaganga has no case pending before this Tribunal. Consequently the only legitimate purpose to seek disclosure would be in relation to a request for review of his judgement pursuant to Rule 120 of the Rules.

7. Witness AWE testified on 3-5 and 9-11 July 2007 both in open and closed session. The Chamber notes that a significant factual, geographic and temporal overlap exists between the *Karemera et al.* case and the *Rutaganda* case. This consequently creates a legitimate forensic purpose for the material requested. The Chamber has reviewed the relevant closed session transcripts as well as the exhibits admitted during his testimony and considers that the material requested by Georges Rutaganda has no nexus with his own case. Rutaganda's

d'appel, 8 December 2006, para. 12; *the Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-R75, and *the Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-R75, Decision on Eliézer Niyitegeka's Appeal Concerning Access to Confidential Materials in the *Muhimana* and *Karemera et al.* Cases, 23 October 2008, para. 21.

⁶ *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-R75, and *the Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-R75, Decision on Eliézer Niyitegeka's Appeal Concerning Access to Confidential Materials in the *Muhimana* and *Karemera et al.* Cases, 23 October 2008, para. 21.

⁷ *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-R75, and *the Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-R75, Decision on Eliézer Niyitegeka's Appeal Concerning Access to Confidential Materials in the *Muhimana* and *Karemera et al.* Cases, 23 October 2008, para. 21.


⁸ Rutaganda's Motion for Access to Closed Session Testimony and Sealed Exhibits of Witness « AWE » in *Karemera et al.*, dated 2 March 2009 and filed on 4 March 2009, para. 9.

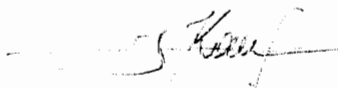
conviction in relation to Cyahafi concerns distribution of weapons. Witness AWE's under seal evidencedoes not shed any light on Rutaganda's conduct in that regard. Consequently, Witness AWE's closed session testimony and the exhibits admitted during his testimony would not materially assist Rutaganda.

FOR THE FOREGOING REASONS, THE CHAMBER

DENIES the Motion.

Arusha, 24 March 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

