

ICTR-98-44-T
26-03-2009
(45454-45452)

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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: 26 March 2009

THE PROSECUTION

v.

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

JUDICIAL RECORDS/ARCHIVE
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**DECISION ON JOSEPH NZIRORERA'S MOTION TO RECALL PROSECUTION
WITNESS HH**

Rule 54 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
Chantal Hounkpatin and Frédéric Weyl

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

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INTRODUCTION

1. On 11 September 2008, the Chamber found that the Prosecution violated Rule 68 of the Rules of Procedure and Evidence by failing to disclose Witness ALG-42's testimony from the *Bagosora* trial.¹ The Chamber found that Witness ALG-42's evidence concerning the RPF's control over, *inter alia*, Jean-Pierre Turatsinze was exculpatory.² As a remedial measure, the Chamber ordered that Joseph Nzirorera is entitled, upon a showing of good cause, to recall Prosecution witnesses who he was not able to fully cross-examine due to the lack of Witness ALG-42's exculpatory evidence.³
2. Joseph Nzirorera now moves to recall Prosecution Witness HH pursuant to the 11 September Decision.⁴ Matthieu Ngirumpatse joins in the Motion.⁵ The Prosecution does not oppose the Motion.⁶

DELIBERATIONS

3. A party seeking to recall a witness must demonstrate good cause. This requires a consideration of the purpose for which the witness will testify, as well as of the reasons why the witness was not questioned earlier on those matters.⁷
4. Joseph Nzirorera submits that Witness HH will provide additional evidence that Jean-Pierre Turatsinze was in fact working for the RPF.⁸ The justification for not having offered this evidence earlier was that the Defence was not aware of it at the time of Witness HH's testimony, because Witness ALL-42's testimony had not been disclosed by the Prosecution.⁹
5. The Chamber finds that Joseph Nzirorera has demonstrated good cause to recall Witness HH. Witness HH testified that Jean-Pierre Turatsinze was a leader of the *Interahamwe* and received his instructions from Matthieu Ngirumpatse. He also testified that Turatsinze distributed weapons to the *Interahamwe* on the authorization of Nzirorera.¹⁰ The

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings, 11 September 2008 ("11 September Decision")

² 11 September Decision, para. 10.

³ 11 September Decision, para. 32.

⁴ Joseph Nzirorera's Motion to Recall Prosecution Witness HH, filed 26 November 2008 ("Motion").

⁵ Requete de Matthieu Ngirumpatse en rappel du témoin HH, filed 26 November 2008.

⁶ Prosecutor's Response to Nzirorera's Motion to Recall Witness HH, filed 1 December 2008 ("Response").

⁷ *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness Ahmed Mbonnyunkiza, 25 September 2007, para. 5.

⁸ Motion, para. 8.

⁹ Motion, para. 9.

¹⁰ T. 8 November 2006, pp. 47 and 52.


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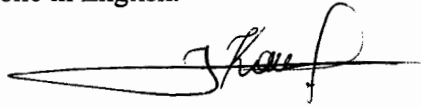
Chamber accepts that Nzirorera may not have been able to cross-examine Witness HH fully due to the missing evidence from Witness ALG-42. Consequently, the Chamber finds that Nzirorera is entitled to recall Witness HH to cross-examine him with respect to Witness ALG-42's testimony. Édouard Karemera and Matthieu Ngirumpatse are also entitled to cross-examine Witness HH if they so choose.

6. The Prosecution has made submissions regarding the appropriate mode of conducting the additional examination of Witness HH, because it appears that Joseph Nzirorera does not intend to impeach Witness HH's evidence, but rather to elicit additional information from him.¹¹ The Prosecution has, however, reserved further argument on this matter for an oral application before Witness HH is sworn.¹² The Chamber will therefore consider the Prosecutions' submissions at that time.

**FOR THE ABOVE MENTIONED REASONS, THE CHAMBER
GRANTS Joseph Nzirorera's Motion.**

Arusha, 26 March 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



¹¹ Response, paras. 3 and 5.

¹² Response, para. 5.