

ICTR-98-44-T
30-03-2009
(45508-45506)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen
Registrar: Adama Dieng
Date: 30 March 2009

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTION

v.

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

ORDER FOR THE TRANSFER OF PROSECUTION WITNESS GBU

Rule 90bis of the Rules of Procedure and Evidence

Office of the Prosecution:
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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 6 August 2008, the Chamber granted Joseph Nzirorera's motion to recall Prosecution Witness GBU for further cross-examination.¹ On 6 February 2009, the Prosecution filed a motion pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence, requesting the Chamber to order the temporary transfer of detained Prosecution Witness GBU who is scheduled to testify in the upcoming trial session.² None of the accused has responded to the Motion.

DELIBERATIONS

2. Pursuant to Rule 90 *bis* (A), any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal. Rule 90 *bis* (B) requires prior verification of two conditions for such an order:

- (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

3. The Prosecution indicates that it has addressed a letter to the Rwandan Minister of Justice requesting confirmation of the availability of Witness GBU. The Prosecution undertakes to file the response of the Minister of Justice once it is received.³

4. In order to minimize any delay in the the trial, the Chamber considers that a transfer order for the Witness GBU is warranted so that the Witnesses and Victims Support Section may start consulting with the relevant Rwandan authorities in order to ensure the presence of this witness. This, however, will be subject to confirmation by the Rwandan authorities that the witness is not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that his transfer to Arusha will not prolong his detention in Rwanda.

¹ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Consolidated Decision on Joseph Nzirorera's Motion to Recall Witness GBU and "Requete de M. Ndirumpatse visant au rappel du temoin GBU", 6 August 2008.

² Prosecutor's Request for Temporary Transfer of Prosecution Witness GBU Pursuant to Rule 90*bis*, filed 6 February 2009 ("Motion").

³ Motion, para. 3.

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FOR THESE REASONS, the CHAMBER

I. GRANTS the Prosecution Motion as follows:

II. REQUESTS, pursuant to Rule 90 *bis*, the Registrar to make the necessary arrangements for the temporary transfer of the detained witness known by the pseudonym GBU to the UNDF facility in Arusha, no later than 28 April 2009, after having verified, in coordination with the Prosecutor and the relevant Rwandan authorities, that this witness is not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that his transfer to Arusha will not prolong his detention in Rwanda;

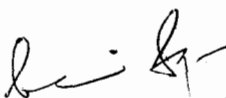
III. ORDERS the Prosecution to provide the Chamber and the Defence, as soon as possible, with any additional supporting material or information as to the availability of the witness in accordance with the requirements set out by Rule 90 *bis* (B);

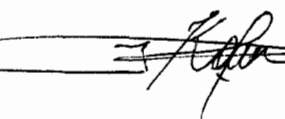
IV. REQUESTS the Registrar to ensure that the return travel of the witness is facilitated as soon as practically possible after his testimony has ended;

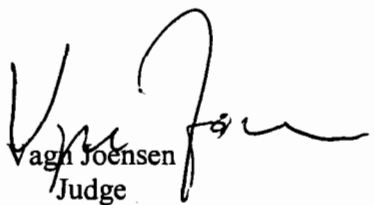
V. REQUESTS the Governments of the Republic of Rwanda and the United-Republic of Tanzania to cooperate with the Registrar in the implementation of this Order; and,

VI. REQUESTS the Registrar to cooperate with the authorities of the Governments of Rwanda and the United-Republic of Tanzania to ensure the proper conduct of the transfer and detention of the witness at the UNDF and to inform the Chamber of any changes in the conditions which may affect the length of the stay of the witness in Arusha.

Arusha, 30 March 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

