

ICTR-98-44-T  
9-4-2009  
(45623-45621)

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Hm



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:** 9 April 2009

**THE PROSECUTION**

v.

Édouard KAREMERA  
Matthieu NGIRUMPATSE  
Joseph NZIRORERA

*Case No. ICTR-98-44-T*

JUDICIAL RECORDS/ARCHIVES  
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**ORDER FOR THE TRANSFER OF PROSECUTION WITNESS HH**

*Rule 90bis of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Don Webster  
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Takeh Sendze

**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

## INTRODUCTION

1. On 26 March 2009, the Chamber granted Joseph Nzirorera's motion to recall Prosecution Witness HH for further cross-examination.<sup>1</sup> On 8 April 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 HH.<sup>2</sup> 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 HH. The Prosecution undertakes to file the response of the Minister of Justice once it is received.<sup>3</sup>

4. In order to minimize any delay in the the trial, the Chamber considers that a transfer order for the Witness HH 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.

<sup>1</sup> *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Consolidated Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness HH, 26 March 2009.

<sup>2</sup> Prosecutor's Request for Temporary Transfer of Prosecution Witness HH Pursuant to Rule 90*bis*, filed 8 April 2009 ("Motion").

<sup>3</sup> Motion, para. 3.

**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 HH to the UNDF facility in Arusha, no later than 27 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);

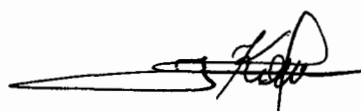
**IV. REQUESTS** the Registrar to ensure that the return travel of the witness is facilitated as soon as practically possible after his testimony has ended;

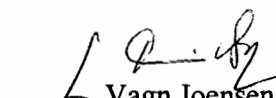
**V. REQUESTS** the Governments of the Republic of Rwanda and the United-Republic of Tanzania to cooperate with the Registrar in the implementation of this Order; and,

**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, 9 April 2009, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]

