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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: 16 April 2009

JUDICIAL RECORDS ARCHIVES
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THE PROSECUTION

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION TO RECALL PROSECUTION
WITNESSES ALG, AWD, G AND T**

Rule 54 of the Rules of Procedure and Evidence

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INTRODUCTION

1. Joseph Nzirorera moves to recall four Prosecution witnesses for further cross-examination. He further requests that these cross-examinations be complete before he commences his defence case.¹

2. Matthieu Ngirumpatse² and Édouard Karemera³ join in the Motion, and Karemera requests that the witnesses be recalled before he testifies in his own defence. In response, the Prosecution requests that the Chamber deny the Motion with respect to Witnesses ALG, AWD and T, and if the request to recall Witness G is granted, that his cross-examination be limited to matters concerning his alleged employment with the RPF.⁴

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.⁵

Witness ALG

4. After Witness ALG testified in these proceedings, the Prosecution took an additional statement from him. Joseph Nzirorera argues that the statement undermines the credibility of Witness ALG because he makes fresh allegations against Nzirorera that he would have been expected to testify about if true and because the statement is inconsistent with his earlier testimony.⁶ Consequently, Nzirorera seeks to cross-examine Witness ALG on the contents of this statement.

¹ Joseph Nzirorera's Motion to Recall Prosecution Witnesses ALG, AWD, G, and T, filed 30 March 2009 ("Motion").

² Requete de Matthieu Ngirumpatse en rappel des temoins a charge ALG, AWD, G et T, filed 3 April 2009.

³ Observations de Édouard Karemera sur la "Joseph Nzirorera's Motion to recall prosecution witnesses ALG, AWD, G et T", filed 6 April 2009.

⁴ Prosecution's Response to Joseph Nzirorera's, Mathieu Ngirumpatse's and Edouard Karemera's "Motion to Recall Prosecution Witnesses ALG, AWD, G and T" Requete de en Rappel de Temoins a Charge ALG, AWD, G et T, filed 6 April 2009 ("Prosecution Response").

⁵ *Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness Ahmed Mbonyunkiza, 25 September 2007, para. 5.

⁶ Motion, paras. 4-9.

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5. The Chamber notes that it has already determined that no credibility issues are raised by the new statement given by Witness ALG.⁷ Accordingly, the Chamber finds that there is no basis to recall Witness ALG for further cross-examination.

Witness AWD

6. Joseph Nzirorera seeks to recall Witness AWD on the basis of a disclosure violation by the Prosecution. 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 ALL-42's testimony from the *Bagosora* trial.⁸ The Chamber found that Witness ALL-42's evidence concerning the RPF's control over Robert Kajuga, Pheneas Ruhumuliza, Witness G and Jean-Pierre Turatsinze was exculpatory.⁹ As a remedial measure, the Chamber ordered that 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 ALL-42's exculpatory evidence.¹⁰

7. Joseph Nzirorera submits that Witness AWD is one of those witnesses and that the purpose of recalling him is to obtain additional evidence to support the assertion that Jean-Pierre Turatsinze was in fact working for the RPF.¹¹ The Prosecution argues that as Nzirorera has already been granted permission to cross-examine Prosecution Witness HH about this exact allegation, judicial economy does not support recalling Witness AWD to solicit the same information.¹²

8. The Chamber notes that Witness AWD gave evidence about Jean-Pierre Turatsinze and specifically alleged that he was a national leader of the *Interahamwe* and reported daily to the executive bureau of the MRND.¹³ Therefore, Witness ALL-42's allegation concerning Turatsinze is directly relevant to Witness AWD's evidence. The Chamber disagrees with the Prosecution's assertion that permitting additional cross-examination of Witness AWD will be cumulative of Witness HH. While both witnesses may be cross-examined by reference to

⁷ *Karemera et al.*, Decision on Joseph Nzirorera's 23rd Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Witness ALG, 30 March 2009.

⁸ *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").

⁹ *Karemera et al.*, 11 September Decision, paras. 10-11.

¹⁰ *Karemera et al.*, 11 September Decision, para. 32.

¹¹ Motion, para. 15.

¹² Prosecution Response, paras. 8-9; See *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness HH, 26 March 2009.

¹³ T. 7 November 2007, p. 25.

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Witness ALL-42's allegation concerning Turatsinze, the evidence solicited from each witness in response may very well be different. Consequently, the Chamber finds that Joseph Nzirorera is entitled to recall Witness AWD for further cross-examination with respect to Witness ALL-42's evidence concerning Turatsinze. Matthieu Ngirumpatse and Édouard Karemera may also cross-examine Witness AWD in this respect.

Witness G

9. Joseph Nzirorera also seeks to recall Witness G on the basis of the 11 September Decision. Nzirorera submits that as this Chamber has already determined that Witness ALL-42's allegation that Witness G was working for the RPF is a matter that could affect Witness G's credibility, he should be entitled to recall him for further cross-examination.¹⁴ The Prosecution leave the matter to the discretion of the Chamber.¹⁵ The Chamber agrees with Nzirorera's submission and finds that he may recall Witness G for further cross-examination with respect to Witness ALL-42's allegation. Matthieu Ngirumpatse and Édouard Karemera may also cross-examine Witness G in this respect.

10. Joseph Nzirorera also seeks to cross-examine Witness G about two additional matters. First, Nzirorera wishes to cross-examine Witness G regarding the amount of benefits paid to him by the Tribunal.¹⁶ Nzirorera submits that since the Chamber reconsidered a decision it had rendered regarding disclosure of benefits paid to Witness G,¹⁷ and as a result ordered disclosure of the full amount only after Witness G testified, he should now be entitled to cross-examine Witness G with respect to these payments.¹⁸ He argues that these payments go directly to Witness G's credibility.¹⁹ The Prosecution argues that Nzirorera has already cross-examined Witness G concerning the payments made to him and that the recent disclosure, revealing that Witness G received ten times the amount that was previously disclosed, is not a valid reason for allowing further cross-examination on the issue.²⁰

¹⁴ Motion, para. 20, citing *Karemera et al.*, 11 September Decision, para. 11; *Karemera et al.*, Decision on Joseph Nzirorera's Motions to Subpoena Witnesses AWD and G for Interview, 10 February 2009 ("AWD and G Subpoena Decision"), para. 7.

¹⁵ Prosecution Response, para. 13.

¹⁶ Motion, para. 24.

¹⁷ See *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T and Motion for Admission of Exhibit: Payments Made for the Benefit of Witness G, 29 May 2008 ("Reconsideration Decision").

¹⁸ Motion, paras. 24-25.

¹⁹ Motion, para. 27.

²⁰ Prosecution Response, paras. 15-16.

11. The Chamber recalls that it granted Joseph Nzirorera's motion to admit into evidence an exhibit showing the payments that have been made by the Tribunal to Witness G, finding that payments made by the Prosecution to a witness are relevant and probative for assessing that witness's credibility.²¹ Given that the Reconsideration Decision was rendered only after Witness G testified, the Chamber finds that Nzirorera should be entitled to put this exhibit to Witness G, albeit briefly given that he has already cross-examined Witness G on this general point. Matthieu Ndirumpatse and Édouard Karemera may also cross-examine Witness G very briefly in this respect.

12. Second, Joseph Nzirorera seeks to cross-examine Witness G concerning an investigator's note of an interview with Witness G in July 2006, disclosed to the Defence in November 2008.²² Nzirorera submits that the note contains evidence from Witness G that appears to be inconsistent with his testimony and may reveal a desire by Witness G to incriminate Prosecution targets.²³

13. The Chamber recalls that it has already considered and rejected this request from Joseph Nzirorera.²⁴ The remedial measures granted to Nzirorera in the 11 September Decision were responsive to the Prosecution's failure to disclose the evidence of Witness ALL-42 in a timely manner. The Chamber finds that Nzirorera has not advanced any reason to reconsider its decision that he is not entitled to question Witness G on the content of the July 2006 investigator's note since it does not relate to Witness ALL-42's evidence.

Witness T

14. Joseph Nzirorera seeks to recall Witness T on the basis of the 11 September Decision, submitting that Witness T testified extensively about his contacts with Jean-Pierre Turatsinze, Robert Kajuga and Witness G.²⁵ Nzirorera also submits that at a recent interview with one of his counsel and representatives of the Prosecution, Witness T stated that he was firmly of the belief that the *Interahamwe* was infiltrated by the RPF.²⁶

15. The Prosecution, however, submits that Witness T already gave evidence concerning his knowledge of RPF infiltration of the *Interahamwe* and stated that he did not have any

²¹ Reconsideration Decision, paras. 8-9.

²² Motion, para. 28.

²³ Motion, para. 28.

²⁴ *Karemera et al.*, AWD and G Subpoena Decision, para. 17.

²⁵ Motion, para. 32.

²⁶ Motion, para. 33.

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personal experience of that.²⁷ As such, the Prosecution submits that it is false to assert that the Defence was prevented from questioning Witness T about infiltration because of the missing evidence of Witness ALL-42 and that good cause has not been demonstrated to recall Witness T.²⁸

16. The Chamber accepts that Witness T gave evidence regarding Jean-Pierre Turatsinze, stating that he was a mobilizer of the *Interahamwe* and was Matthieu Ngirumpatse's right hand man with respect to meeting the MRND's objectives.²⁹ The Chamber also accepts that Witness T gave some evidence concerning Witness G, Robert Kajuga and Phineas Ruhumuliza.³⁰ However, in light of the fact that Witness T already testified that he had no personal knowledge of infiltration of the *Interahamwe*, the Chamber is not convinced that putting Witness ALL-42's allegations to him in further cross-examination will be fruitful.

17. Joseph Nzirorera also seeks to cross-examine Witness T about two additional matters. First, Nzirorera seeks to cross-examine Witness T concerning a statement given in July 1996, in which Witness T alleges that Nzirorera engaged in fraud and bribery. Nzirorera argues that these false statements demonstrated that Witness T was attempting to curry favour with the Prosecution.³¹

18. The Chamber recalls that it has previously found that the Prosecution violated Rule 66(A)(ii) by failing to disclose the July 1996 statement in a timely manner. As a remedial measure, the Chamber held that Joseph Nzirorera may confront Witness T with the information contained in the statement upon a showing of good cause.³² The Chamber further recalls that it held that Nzirorera was only marginally prejudiced by the failure to disclose the statement before the testimony of Witness T in light of the nature of the information contained therein.³³ The Chamber finds that Nzirorera has also not demonstrated good cause to recall Witness T in this respect. The allegations made in the July 1996 statement are peripheral at best to the issues in the proceedings and the Chamber does not find that Nzirorera's desire to demonstrate that Witness T was "gilding the lily" sufficient to order further cross-examination.

²⁷ Prosecution Response, para. 22; See T. 1 June 2006, p. 59.

²⁸ Prosecution Reponse, para. 23.

²⁹ T. 24 May 2006, p. 19.

³⁰ Motion, para. 34.

³¹ Motion, para. 38.

³² *Karemera et al.*, Decision on Joseph Nzirorera's 25th Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Witness T, 24 March 2009 ("Decision on 25th Notice").

³³ *Karemera et al.*, Decision on 25th Notice, para. 6.

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19. Second, Joseph Nzirorera seeks to cross-examine Witness T with respect to the amount of benefits paid to him by the Tribunal, for the same reasons as advanced with respect to Witness G.³⁴ Given that Nzirorera does not advance the issue of benefits paid to Witness T as a ground for recalling him,³⁵ the Chamber does not find that this issue warrants the recall of Witness T.

Ancillary Orders

20. Joseph Nzirorera requests that Witness G testify by video-link. The Chamber recalls that it previously found that the testimony of Witness G should be received by video-link and therefore grants Nzirorera's request in this respect.³⁶ With respect to the date and time of Witness G's further cross-examination, the Chamber will issue a separate scheduling order in this respect.

21. Joseph Nzirorera further requests that the Chamber order the transfer to Arusha of Witnesses GBU, HH, and AWD no later than 28 April 2009. The Chamber notes that orders in relation to Witnesses GBU and HH have been issued.³⁷ With respect to Witness AWD, the Chamber notes that a transfer order may only be issued after prior verification that the two conditions of Rule 90 *bis* (B) have been met, namely:

- a. 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;
- b. Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

22. While it is preferable that confirmation that a witness is available to be transferred pursuant to the conditions outlined in Rule 90 *bis* (B) is obtained before issuing a transfer order, the Chamber finds that in these particular circumstances it is expedient to issue a transfer order for Witness AWD, subject to such confirmation. However, the time-frame requested by Joseph Nzirorera is likely too short to make the necessary arrangements and in particular to enable the Witnesses and Victims Support Section to consult with the relevant Rwandan authorities in order to ensure the presence of this witness. Consequently, the

³⁴ Motion, paras. 41-45.

³⁵ Motion, para. 44.

³⁶ See *Karemera et al.*, Decision on Prosecutor's Motion for Special Protective Measures for Witnesses G and T, 14 September 2005.

³⁷ See *Karemera et al.*, Order for the Transfer of Prosecution Witness GBU, 30 March 2009; *Karemera et al.*, Order for the Transfer of Prosecution Witness HH, 9 April 2009.

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Chamber requests that the Prosecution contact the Rwandan Ministry of Justice without delay to seek confirmation that the conditions of Rule 90 *bis* (B) are met with respect to Witness AWD in order to ensure his presence in Arusha as soon as possible, but in any event no later than 4 May 2009.


FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

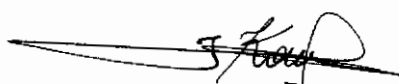
- I. **GRANTS** Joseph Nzirorera's Motion in part and finds that Nzirorera may recall Witnesses AWD and G for further cross-examination, not to exceed one hour for each witness;
- II. **FINDS** that Édouard Karemera and Matthieu Ngirumpatse may also cross-examine Witnesses AWD and G for a period not to exceed 30 minutes for each witness;
- III. **FINDS** that the Prosecution may re-examine Witnesses AWD and G for a period not to exceed 30 minutes for each witness;
- IV. **REQUESTS** the Prosecution to contact the Rwandan Ministry of Justice within 1 day of the date of this decision to confirm the availability of Witness AWD pursuant to the conditions of Rule 90 *bis* (B) for the period of 27 April to 22 May 2009;
- V. **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 AWD to the UNDF facility in Arusha, as soon as possible but in any event no later than 4 May 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;
- VI. **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);
- VII. **REQUESTS** the Registrar to ensure that the return travel of the witness is facilitated as soon as practically possible after his testimony has ended;

VIII **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,

IX. **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, 16 April 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

