



ICTR-98-44-T
22-05-2009
(46098-46094)

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**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

UNITED
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TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 22 May 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 EDOUARD KAREMERA'S MOTION FOR THE ADMISSION OF
AN EXPERT WITNESS**

Rule 94 bis of the Rules of Evidence and Procedure

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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 May 2009, Édouard Karemera moved the Chamber, on the basis of Rule 94 *bis* of the Rules of Procedure and Evidence ("Rules"), to admit Dr. Xavier Bangamwabo as an expert witness in this case.¹ According to Karemera, the testimony of Dr. Bangamwabo meets the requirements set by the jurisprudence for the admission of evidence by an expert witness. Karemera submits that Dr. Bangamwabo will testify on the statements, messages and correspondence of Rwandan politicians during the period from April to July 1994² and that he is an expert possessing specialised knowledge in linguistics and special experience which could assist the Chamber in the evaluation of evidence.³ The Prosecutor opposes Karemera's Motion.⁴

DELIBERATION

Preliminary matter

2. Édouard Karemera's request raises a preliminary matter regarding the application of Rule 94 *bis* (A) of the Rules. The Chamber notes that Dr. Bangamwabo is included on Edward Karemera's list of witnesses under the pseudonym of LHK.⁵ However, Karemera had not previously indicated that Dr. Bangamwabo was to testify as an expert witness.⁶ As such, the motion under consideration is the first submission to the Chamber and the Prosecution

¹ Requête aux Fins d'Acceptation d'un Témoin-Expert, 6 May 2009 ("Karemera's Motion").

² Karemera includes in Annex I to his motion a report by Dr. Bangamwabo entitled « Analyse des déclarations, messages et correspondances du Gouvernement intérimaire rwandais (Avril – Juillet 1994): contenus et thèmes. »

³ *Ibid.*, para. 8 (p. 3) to para. 9 (p. 5). The Chamber notes that there is a problem with the numbering of paragraphs in Karemera's Motion.

⁴ Prosecution's Response to Karemera's Requête aux Fins d'Acceptation d'un Témoin-Expert, 12 May 2009 ("Prosecution's Response").

⁵ See Mémoire préalable à la présentation de la preuve à décharge d'Edouard Karemera, 31 January 2008, p. 30 ("Karemera's Pre-Trial-Brief"); Soumission de Edouard Karemera suite au « Scheduling Order » rendue par la Chambre le 27 janvier 2009, 30 January 2009, para. 3. Following a request from Édouard Karemera, the Chamber lifted the protective measures granted to LHK: *Prosecutor v. Edouard Karemera, Matthieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on the Protection of Edouard Karemera's Witnesses, 24 October 2008.

⁶ Karemera's Pre-Trial-Brief refers to the testimony of expert witnesses on the interpretation and analysis of incriminating speeches, but without any other indication of the identity of these witnesses: Karemera's Pre-Trial-Brief, p. 17.

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that identifies this witness as an expert witness. If Dr. Bangamwabo was meant to testify during the most recent sessions of Karemera's defence, then it is clear that Dr. Bangamwabo's report was not disclosed within the period prescribed by Rule 94 *bis* (A), namely not less than twenty-one days prior to the date on which an expert witness is expected to testify. It is equally clear that Karemera did not disclose this report "as early as possible" since the report dates from January 2009⁷.

3. Accordingly, Édouard Karemera has violated his obligations under Rule 94 *bis* (A). Nonetheless, the Chamber finds that it is in the interest of justice to rule on the merits of his request.

On the merits

4. Rule 94 *bis* does not specify the requirements for the admission of a witness as an expert witness. However, Rule 89 entrusts the Trial Chamber with broad discretion to employ rules of evidence that "best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law."

5. The jurisprudence sets five principal requirements for the admission of the testimony of an expert witness: (i) the Chamber discretionarily deems it necessary to hear an expert on a determined issue; (ii) the prospective witness is an expert on that determined issue; (iii) the statement or report is reliable; (iv) the statement or report is relevant and of probative value; and (v) the substance of the statement or report falls within the expertise of the witness.⁸

⁷ See Karemera's Motion, Annex I, « Analyse des déclarations, messages et correspondances du Gouvernement intérimaire rwandais (Avril – Juillet 1994): contenus et thèmes. »,

⁸ *Karemera et al.*, Decision on Prospective Prosecution Experts Witnesses Alison Des Forges, Andre Guichaoua and Binaifer Nowrojee, 25 October 2007, para. 15 ("*Karemera et al.*, Decision on Prosecution Expert Witness").

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6. With respect to the first of these requirements, the Chamber must be convinced that the expert evidence could assist it in understanding the evidence presented or in determining a fact in issue.⁹ To this end, the Chamber must decide if the nature of the question is such that it cannot validly arrive at its own opinion on this question without the assistance of witnesses possessing specialised knowledge or specific experience in a relevant field.¹⁰

7. In this regard, Édouard Karemera argues that the testimony of Dr. Bangamwabo can assist the Chamber in interpreting the statements, messages and correspondence of Rwandan politicians during the period from April to July 1994.¹¹

8. A review of the proposed testimony of Dr. Bangamwabo indicates that his opinions address issues on which the Chamber has taken judicial notice or for which it already possesses relevant evidence. The first part of his report addresses the context of the Rwandan genocide, notably the historical context of interethnic relations in Rwanda. The Chamber is of the view that it does not need this contextual exposé to understand the material led in evidence during this trial and to conclude to the guilt or innocence of the accused.¹² The second and third parts of the report of Dr. Bangamwabo contain summaries and interpretations of the statements, messages and correspondence of Rwandan politicians which have in large part already been led into evidence in this trial and on which the Chamber has

⁹ *Ibid.*, para. 16; *Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 32.

¹⁰ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Decision on Defence Motion for Appearance of an Accused as an Expert Witness (TC), 9 March 1998 (“[T]he Tribunal is of the view that there is a fundamental difference between, on the one hand, a witness called to testify about the crimes with which the accused is directly charged and, on the other hand, an expert witness, whose testimony is intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field”). In another more recent case, the Appeals Chamber has confirmed that there was no error in a Trial Chamber’s denial to hear an expert witness on international criminal law. See: *Prosecutor v. Milomir Stakic*, Case No.: IT-97-24-A, Judgement (AC), 22 March 2006, para. 164.

¹¹ Karemera’s Motion, para. 9 (p. 5).

¹² *Karemera et al.*, Decision on Prosecution Expert Witness, para. 25.

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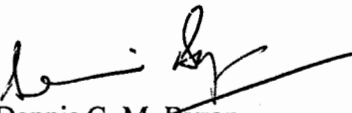
heard numerous witnesses. As such, the Chamber is of the view that it does not need an expert witness to appreciate this evidence and to evaluate the credibility of these witnesses.¹³

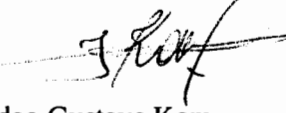
9. The Chamber thus concludes that the questions of fact which it is called upon to resolve in relation to this evidence do not require the assistance of a witness and that Dr. Bangamwabo's testimony should not be admitted as expert testimony within the meaning of Rule 94 *bis* of the Rules. In these circumstances, it is not necessary to discuss the other conditions relating to the admission of Dr. Bangamwabo as an expert witness.

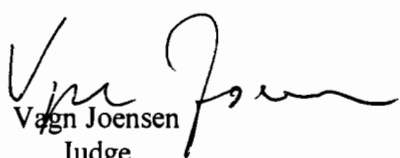
FOR THESE REASONS, THE CHAMBER

DENIES Édouard Karemera's Motion in its entirety.

Arusha, 22 May 2009, done in French and English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



¹³ *Ibid.*, paras 24, 29 et 34.