



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
2-7-2009  
(46536-46534)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

46536  
2mm  
f

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date :** 2 July 2009

**THE PROSECUTION**

v.

**Édouard KAREMERA**  
**Matthieu NGIRUMPATSE**  
**Joseph NZIRORERA**

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

JUDICIAL RECORDS  
2009 JUL-2 P 5:00  
[Signature]

**INTERIM ORDER CONCERNING JOSEPH NZIRORERA'S MOTION TO RECALL  
PROSECUTION WITNESS BDW**

*Rules 54 and 73 of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Don Webster  
Sunkarie Ballah-Conteh  
Saidou N'Dow  
Arif Virani  
Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye et Félix Sow

**Defence Counsel for Matthieu Ngirumpatse**  
Chantal Hounkpatin et Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson et Patrick Nimy Mayidika Ngimbi

[Signature]

## INTRODUCTION

1. In a Motion filed on 3 June 2009, Joseph Nzirorera moves the Chamber for an order to recall Prosecution Witness BDW for further cross-examination,<sup>1</sup> referring to an affidavit signed by his investigator that BDW will recant his testimony that Nzirorera spoke at a MRND rally in Kibuye in June 1993.<sup>2</sup>
2. The Prosecution does not oppose the recall of BDW for further cross-examination on the condition that his alleged intention to recant his testimony is verified, however, the Prosecution objects to a decision being taken on the basis of the investigator's affidavit alone.<sup>3</sup>

## DELIBERATIONS

3. The standard set forth in previous jurisprudence for the recall of witnesses is that "[a] party seeking to recall a witness must demonstrate good cause, which has been defined as a substantial reason amounting in law to a legal excuse for failing to perform a required act. In assessing good cause, the Chamber must carefully consider the purpose of the proposed testimony as well as the party's justification for not offering such evidence when the witness originally testified. The right to be tried with[out] undue delay as well as concerns of judicial economy demand that recall should be granted only in the most compelling of circumstances where the evidence is of significant probative value and not of a cumulative nature."<sup>4</sup>
4. In *Bagosora et al* the Chamber opined that the Defence may draw the Chamber's attention to inconsistencies between testimony of the witnesses before the Chamber and any declarations obtained subsequently. If prejudice can be shown from its inability to put these inconsistencies to the witness, the Defence may submit motions for their recall; if there is no

<sup>1</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Joseph Nzirorera's Motion To Recall Prosecution Witness BDW, filed on 3 June 2009 ("Motion").

<sup>2</sup> Motion, para.2; see Annex A, Affidavit of Mr. Dick Prudence Munyeshuli dated 1 June 2009.

<sup>3</sup> *Karemera et al.*, Prosecutor's Response to Joseph Nzirorera's Motion To Recall Prosecution Witness BDW, ("Response") filed on 8 June 2009, para. 9.

<sup>4</sup> *Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-T ("*Bagosora et al.*"), Decision on the Prosecution Motion to Recall Witness Njanjwa, 29 September 2004, para.6; *Prosecutor v. Clement Kayishema & Obed Ruzindana* Case No. ICTR-95-1-T ("*Kayishema et al.*"), Decision on the Defence Motion for the Re-examination of Defence Witness DE, August 1998, para. 14.

need for the witness's explanation of the inconsistency, because the inconsistency is minor or its nature is self-evident, then the witness will not be recalled.<sup>5</sup>

5. Having reviewed the testimony of BDW<sup>6</sup>, the Chamber considers the evidence of BDW of sufficient importance to warrant a recall of the witness for cross-examination, should Nzirorera's claim that the witness intends to recant his testimony be verified. However, the Chamber considers that the affidavit of Nzirorera's investigator is not a sufficient basis for it to conclude that BDW does indeed intend to recant his testimony.

6. The Chamber, therefore, requests the Registry to assist it as follows.

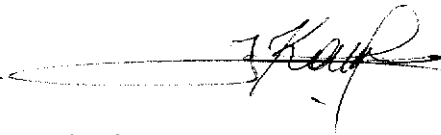
**FOR THE FOREGOING REASONS, THE CHAMBER**

**REQUESTS** the Registry to meet with Witness BDW and obtain a signed statement from him as to whether he, if recalled, intends to recant his prior testimony in this trial, and if so, his reasons for testifying as he did previously.

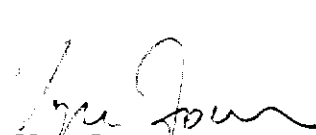
Arusha, 2 July 2009, done in English.



Dennis C. M. Byron  
Presiding Judge



Gberdao Gustave Kam  
Judge



Vagn Joensen  
Judge

[Seal of the Tribunal]

<sup>5</sup> *Bagosora et al.*, Decision on the request for documents arising from Judicial Proceedings in Rwanda in respect of Prosecution Witnesses, 16 December 2003, para.8.

<sup>6</sup> In his oral testimony, BDW testified that in June 1993 Nzirorera was among the national leaders of the MRND present at the MRND rally and he spoke at this meeting. BDW stated that Nzirorera called the Tutsi the enemy and called for training of the youth in order to fight the enemy. Nzirorera apparently criticized the inhabitants of Kibuye for not recruiting *interahamwe*, see Transcript of 14 November 2007, pp.41-46.