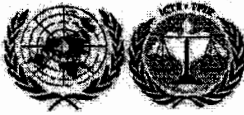


ICTR-98-44-T
24-07-2009
(46679-46677)

46679
G



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: 23 July 2009

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVE
RECEIVED

2009 JUL 24 P 1:35
J. Robinson

**DECISION ON 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
Saidou N'Dow
Arif Virani
Sunkarie Ballah-Conteh
Eric Husketh
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

84

INTRODUCTION

1. On 3 June 2009, Joseph Nzirorera filed a motion requesting the recall of Prosecution Witness BDW.¹ The Motion is supported by an affidavit signed by Nzirorera's investigator stating that BDW intends to recant his testimony that Nzirorera spoke at a MRND rally in Kibuye in June 1993.² On 8 June 2009, the Prosecution responded objecting to the adequacy of the investigator's affidavit.³

2. After a review of the Parties' filings, the Chamber found the affidavit of the Defence's investigator to be an insufficient basis to conclude that BDW does indeed intend to recant his testimony. Consequently, the Chamber issued the Interim Order requesting the Registry to meet with 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.⁴

DELIBERATION

3. The Chamber recalls that the standard set forth in the jurisprudence for the recall of witnesses is that "[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 the reasons why the witness was not questioned earlier on those matters."⁵

4. On 14 July 2009, the Registry transmitted its report to the Chamber.⁶ In this report, Prosecution Witness BDW denied having declared any intention to recant his testimony.⁷ However, BDW declined to sign a form to conform in writing his statements to the Registry Legal Officer who met with him, arguing that his personal security was in jeopardy and his

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera* ("Karemera et al."), Case No. ICTR-98-44-T, Joseph Nzirorera's Motion to Recall Prosecution Witness BDW ("Motion"), filed on 2 June 2009.

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

³ Prosecutor's Response to Joseph Nzirorera's Motion to Recall Prosecution Witness BDW ("Response"), filed on 8 June 2009, para. 9.

⁴ Interim Order Concerning Joseph Nzirorera's Motion to Recall Prosecution Witness BDW ("Interim Order"), 2 July 2009, para. 5.

⁵ *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness Ahmed Mbonyanzika, 25 September 2007, para. 5, footnote omitted. See also *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakize, Anatole Nsengiyumva* ("Bagosora et al."), Case No. ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Njanjwa, 29 September 2004, para. 6; *Prosecutor v. Clément Kayishema and Obed Ruzindana* ("Kayishema et al."), Case No. ICTR-95-01-T, Decision on the Defence Motion for the Re-Examination of Defence Witness DE, 19 August 1998, para. 14.

⁶ *Karemera et al.*, Interoffice Memorandum - Report on Interim Order Concerning Joseph Nzirorera's Motion to Recall Prosecution Witness BDW ("Report on Interim Order"), dated 14 July 2009.

⁷ Report on Interim Order, para. 4.

187

46677

protective measures are ineffective.⁸ In light of this, the Chamber hereby considers that no sufficient reason warrants the recall of BDW.


5. In addition, after a careful review of the Registry's Report on the Interim Order, the Chamber observes that Prosecution Witness BDW raises concerns about his security following his testimony as a protected witness in this case and especially about the use of his testimony outside of the Tribunal. The Chamber is of the view that such serious allegations touching upon the security of witnesses should be investigated.


FOR THE FOREGOING REASONS, THE CHAMBER

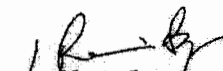
DENIES the Motion in its entirety; and

DIRECTS the Registry to make inquiries about the allegations made by Prosecution Witness BDW regarding the use of his testimony in the *Karemera et al* trial outside of the Tribunal and to report to the Chamber on this issue.

Arusha, 23 July 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



⁸ *Ibid.*, para.5.

TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input checked="" type="checkbox"/> Chamber III (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Karemera et al.			Case Number: ICTR-98-44-T
Dates:	Transmitted: 24 July 2009		Document's date: 23 July 2009	
No. of Pages:	3	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	Decision on Joseph Nzirorera's motion to recall Prosecution Witness BDW			
Classification Level:		TRIM Document Type:		
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Submission from non-parties		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input checked="" type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Submission from parties		
<input type="checkbox"/> Confidential		<input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Accused particulars		
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities		

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

☒ Filing Party hereby submits only the original, and **will not submit** any translated version.

☐ Reference material is provided in annex to facilitate translation.

Target Language(s):

☐ English ☒ French ☐ Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

☐ English ☐ French ☐ Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
--	--

III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: