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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED
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UNIES OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 3 August 2009

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

2009 AUG -3 P 3:50
JUDICIAL RECORDS ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION OF
DECISION ON MOTION FOR JUDGEMENT OF ACQUITTAL: INCITEMENT**

Rule 98 bis of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 19 March 2008, the Chamber denied Joseph Nzirorera's request for acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence ("Rules").¹ Nzirorera requests reconsideration of this decision, specifically of the Chamber's findings on Count two of the Indictment for direct and public incitement to commit genocide.² The Prosecution opposes Nzirorera's Motion.³

DELIBERATION

2. The Chamber has the inherent power to reconsider its own decisions, but this is an exceptional remedy available only in particular circumstances. Reconsideration is permissible when, *inter alia*, there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.⁴

3. Given that the question before the Chamber is whether reconsideration is warranted in relation to its holdings on Rule 98 *bis* motions filed in this case, the Chamber will briefly recall the applicable law on such motions.

4. The cardinal test under Rule 98 *bis* is whether there is sufficient evidence upon which a reasonable trier of fact *could*, if the evidence is believed, find the Accused guilty of the crime charged.⁵ The question for the Chamber, therefore, is not whether the trier *would* in fact arrive at a conviction beyond reasonable doubt in relation to the Prosecution evidence (if accepted) but whether the trier *could*. Under Rule 98 *bis*, the Chamber will assess the Prosecution evidence as a whole, and make any reasonable inferences.⁶ The Chamber shall

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al.") Decision on Motions for Judgement of Acquittal, 19 March 2008 ("Challenged Decision").

² Nzirorera's Motion for Reconsideration of Decision on Motion for Judgement of Acquittal: Incitement, filed on 6 July 2009 ("Nzirorera's Motion").

³ Prosecutor's Response to "Joseph Nzirorera's Motion for Reconsideration of Decision on Motion for Judgement of Acquittal: Incitement," filed on 13 July 2009 ("Prosecution's Response").

⁴ *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Certificate of Safe Conduct, 24 March 2009.

⁵ Rule 98 *bis* provides: "If after the close of the case for the prosecution, the Trial Chamber finds that the evidence is insufficient to sustain a conviction on one or more counts charged in the indictment, the Trial Chamber...shall order the entry of judgement of acquittal in respect of those counts." See *The Prosecutor v. Ildéphonse Hategekimana*, Case No. ICTR-00-55B-T, Decision on Motion for Acquittal Pursuant to Rule 98 *bis*, 5 June 2009; *Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A ("Jelisić"), Appeal Judgement, 5 July 2001, para 37.

⁶ *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on Defence Motion for Judgement of Acquittal Pursuant to Rule 98 *bis*, 22 May 2007, para. 3; *The Prosecutor v. Théoneste Bagosora*,

assume the evidence to be reliable and credible unless convincing arguments have been raised that it is obviously unbelievable, such that no reasonable trier of fact could rely upon it.⁷ In sum, a Trial Chamber should only uphold a Rule 98 *bis* motion if it is entitled to conclude that no reasonable trier of fact could find the evidence sufficient to sustain a conviction beyond reasonable doubt.⁸ This will only be the case when there is no evidence whatsoever which is probative of one or more of the required elements of a crime charged, or where the only such evidence is incapable of belief.⁹

5. Joseph Nzirorera argues that a holding in the *Kalimanzira* trial judgement on the public prong of the incitement charge with respect to a meeting of a local "crisis committee" is grounds for the reconsideration of the Chambers' initial denial of the 98 *bis* motion as it relates to the charge of incitement.¹⁰ Nzirorera avers that, like the crisis committee in *Kalimanzira*, the alleged meeting of the Kigali security council on 30 April 1994¹¹ was not open to the public, nor held in a place open to the public and does not therefore meet the requirements of "public" for the purposes of a conviction.¹²

6. The Chamber is of the view, however, that determination of whether the 30 April 1994 meeting meets the "public" prong of an incitement charge requires a substantive evaluation of the evidence. Indeed, the Prosecution evidence on the meeting at issue in the instant case and the factual findings on the security council meeting discussed in *Kalimanzira* evince that the location and circumstances in which these meetings took place are *prima facie* distinguishable.¹³ Accordingly, whether the 30 April 1994 meeting qualifies as "public" for

Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva, Case No. ICTR-98-41-T ("*Bagosora et al.*"), Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 11.

⁷ *Jelisić* Appeal Judgement, para. 55.

⁸ *Jelisić* Appeal Judgement, para. 56; *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion Requesting Judgement of Acquittal Pursuant to Rule 98bis, 21 June 2004, para. 17.

⁹ *Bagosora et al.*, Decision on Motions for Judgement of Acquittal, para. 9.

¹⁰ Nzirorera's Motion, para. 14, referring to *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Trial Judgement, 22 June 2009, para. 636.

¹¹ Amended Indictment, para. 32.3.

¹² Nzirorera's Motion, paras 7-8.

¹³ The Chamber notes that Witnesses UB, ALG and AWE testified relevant to the public nature of the security council meeting. Witness UB testified that the meeting, attended by more than 40 people, was of an expanded nature and, as a result, had to be held in a corridor of the Kigali-ville *préfecture* headquarters rather than in a meeting room as was normal: Witness UB, T. 28 February 2006, pp. 29-31. Attendees were *Interhamwe*, political party leaders, conseillers, soldiers and administrative authorities: Witness UB, T. 28 February 2006, pp. 29-30; Witness ALG, T. 7 November 2006, pp. 19-30; Witness AWE, T. 4 July 2007, pp. 30-32. Witness UB noted that although he had not been invited, no one prevented him from attending. Witness UB, T. 7 March 2006, pp. 60-63. Witness ALG stated that he too attended the 30 April 1994 meeting, even though he had not been invited, and that attendance was not restricted to members of the "security council" or staff of the bureau *préfectural*: Witness ALG, T. 7 November 2006, pp. 19-30. Witness ALG further noted that the meeting has been held for the attention of all members of the community: Witness ALG, T. 7 November 2006, p. 27. Witness AWE corroborated the testimonies of the other two witnesses, stating that he had been

the purposes of an incitement conviction is better left for consideration during judgement deliberations. In the Chamber's opinion, Joseph Nzirorera has thus failed to show that reconsideration of the Challenged Decision in relation to this charge is warranted.

7. Joseph Nzirorera also contends that the Trial Chamber made a critical factual error in the Challenged Decision with relation to its findings on the swearing-in ceremony of Juvenal Kajelijeli.¹⁴ Nzirorera points to what he claims is the directly contradictory testimony of Witnesses GAV and ANU with that of GBU, coupled with GBU's admitted signing of a false declaration for money.¹⁵ According to Nzirorera, the testimony of Witnesses GAV and ANU is counter to the Prosecution's contentions, and are, instead, supportive of Nzirorera's defence. Nzirorera argues that the Prosecution's case for incitement has completely broken down as there is no possible way a conviction could be secured on the testimony of Witness GBU alone.¹⁶

8. The Chamber finds, however, that Joseph Nzirorera's motion fails to convincingly establish that no reasonable trier of fact could rely on GBU's evidence. Regarding GBU's alleged lack of credibility, Nzirorera has not shown that GBU's testimony is obviously unbelievable on the basis of his admission that he made a false declaration. The Chamber is of the view that the ultimate determination of GBU's credibility is an issue more appropriately addressed during deliberations.¹⁷ Regarding the alleged lack of corroboration of GBU's testimony, Nzirorera has failed to show that no reasonable trier of fact could find that GBU was corroborated by Witnesses GAV and ANU, assuming that their evidence was reliable and credible. Again, the Chamber is of the view that whether these witnesses actually corroborate each other on the material facts in relation to the charge of incitement regarding the swearing-in ceremony of Juvenal Kajelijeli is a question for determination within the context of all other evidence adduced during trial.¹⁸ In the Chamber's opinion, Nzirorera has

invited to the meeting and that the attendees were from a broad cross-section of the community, not just members of the security council: Witness AWE, T. 4 July 2007, pp. 30-32; T. 9 July 2007, pp. 54-57.

¹⁴ Nzirorera's Motion, para. 10

¹⁵ *Ibid.*, para. 11

¹⁶ *Ibid.*, para. 12.

¹⁷ The Chamber notes that Witness GBU was recalled in May of 2009 to address concerns that he had recanted his testimony via a written instrument in exchange for 30,000 RF. However, during the recall, GBU explained that he affixed his signature and thumbprint to the recantation in order to demonstrate that testimonies were being bought and sold: Witness GBU, T. 5 May 2009, p. 5. GBU also indicated that he had no intention of actually recanting his testimony, pointing out that he brought the letter to the attention of the Prosecution. Further, GBU adamantly maintained his testimony of 7 December 2006: Witness GBU, T. 5 May 2009, p. 19.

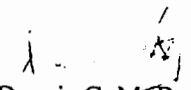
¹⁸ The Chamber notes that Witnesses GAV and ANU testified regarding the swearing-in ceremony of Juvenal Kajelijeli. Assuming that their evidence is reliable and credible, GAV and ANU's testimony is fundamentally consistent with GBU's account of the swearing-in ceremony. All three witnesses testified that a swearing-in ceremony for Kajelijeli took place at the Gisese stadium and that Joseph Nzirorera gave a speech

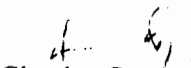
thus failed to show that reconsideration of the Challenged Decision in relation to this charge is warranted.

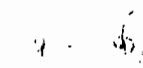
FOR THE FOREGOING REASONS, THE CHAMBER

DENIES Joseph Nzirorera's Motion in its entirety.

Arusha, 3 August 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



at that ceremony in which he stated that it was necessary to support the new *bourgmestre* Kajelijeli: Witness GAV, T. 4 October 2007, p. 60; Witness ANU, T. 13 June 2007, p. 42; Witness GBU, T. 4 December 2006, pp. 37-38. Further, Witness GAV testified that "Nzirorera talked using hidden meanings," suggesting that while Nzirorera did not say outright that he commended the killings of the Tutsi in Mukingo, the message was clearly sent to those present at the ceremony: Witness GAV, T. 4 October 2007, p. 60. Witness GBU also testified that Nzirorera's request for community support of Kajelijeli was perceived as direct endorsement of the killing of Tutsi, given the widespread perception within the community that Kajelijeli had been responsible for the massacres: Witness GBU, T. 4 December 2006, pp. 37-38. Finally, both GBU and GAV understood Kajelijeli's reinstatement, with Nzirorera's support, to be a reward for the killings over which he had presided: Witness GAV, T. 4 October 2007, p. 60; Witness GBU, T. 4 December 2006, pp. 37-38.