



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
29-9-2009
(47945-47943)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

47945
HM

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 29 September 2009

THE PROSECUTOR

v.

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

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**DECISION ON APPEALS CHAMBER REMAND REGARDING RUTAGANDA'S
APPEAL CONCERNING ACCESS TO CONFIDENTIAL MATERIALS IN THE
KAREMERA ET AL. CASE**

Rule 75(F)(i) of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Saidou N'Dow
Arif Virani
Eric Husketh
Sunkarie Ballah-Conteh
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

by

INTRODUCTION

1. On 4 March 2009, Georges Rutaganda filed a motion requesting access to closed session transcripts and sealed exhibits related to the testimony of Witness AWE concerning events in Cyahafi in 1994 in the case of *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al. case").¹ The Chamber denied Rutaganda's Motion on 24 March 2009.² In so doing, the Chamber stated that AWE's testimony would not materially assist Rutaganda because he had only been convicted of distributing weapons in Cyahafi, and AWE's testimony did not shed any light on Rutaganda's conduct in that regard.³
2. On 8 April 2009, Georges Rutaganda requested the Appeals Chamber to set aside the Impugned Decision, and to order the disclosure of the requested materials.⁴ The Appeals Chamber noted that Rutaganda had asserted that he sought the requested information not just for the distribution of weapons, but also for his involvement in Tutsi mass killings in relation to the 1994 Cyahafi events, and found that the Chamber should have considered crimes for which he was held responsible in the area around the Amgar garage.⁵ Therefore, the Appeals Chamber granted Rutaganda's appeal in part and remanded the matter to the Chamber, directing it to "consider whether the requested material is likely to materially assist the Appellant's case taking into account the full extent of the Appellant's criminal conduct in Cyahafi sector for which he was convicted".⁶

DELIBERATIONS

3. The Chamber notes that where a party requests access to confidential material from another case, such material must be identified or described by its general nature and a legitimate forensic purpose for accessing it must be demonstrated.⁷ Consideration must be given to the relevance of the material sought, which may be demonstrated by showing the existence of a nexus between the requesting party's case and the case from which such

¹ Rutaganda's Motion for Access to Closed Session Testimony and Sealed Exhibits of Witness "AWE" in *Karemera et al.*, filed 4 March 2009, ("Rutaganda's Motion").

² *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al."), Decision on Rutaganda's Motion for Access to Closed Session Testimony and Sealed Exhibits of Witness "AWE", 24 March 2009, ("Impugned Decision").

³ Impugned Decision, para. 7.

⁴ Appeal Against the Trial Chamber Decision on Rutaganda's Motion for Access to Witness "AWE" Confidential Materials in *Karemera et al.*, 24 March 2009, filed on 8 April 2009.

⁵ *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Rutaganda's Appeal Concerning Access to Confidential Materials in the *Karemera et al.* Case (AC), 10 July 2009, para. 28, ("Remand Decision").

⁶ Remand Decision, para. 31.

⁷ Remand Decision, para. 13.

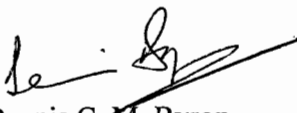
material is sought.⁸ Such a factual nexus may be established, for example, if the cases arise from events alleged to have occurred in the same geographic area at the same time, although this may not always be necessary or sufficient.⁹ A case-specific analysis is required in each instance, and a Trial Chamber must be satisfied that the requesting party has established that this material is likely to assist its case materially, or that there is at least a good chance that it would.¹⁰


4. The Chamber recalls that a significant factual, geographic, and temporal overlap exists between the *Karemera et al.* case and the *Rutaganda* case, which creates a legitimate forensic purpose for the material requested.¹¹ Moreover, the Chamber notes that Georges Rutaganda seeks disclosure of closed session transcripts and sealed exhibits of AWE because he has reason to believe that AWE provided a lot of information to the Chamber concerning his involvement in the “distribution of weapons” and “Tutsi mass killings” related to the “1994 Cyahafi events”.¹² Furthermore, the Chamber notes that Rutaganda was convicted for the killing of Tutsis in the area around the Amgar garage,¹³ which was found to have been in Cyahafi sector.¹⁴ Accordingly, taking into account the full extent of Rutaganda’s criminal conduct in Cyahafi sector for which he was convicted, the Chamber considers that he has established that the requested documents are likely to materially assist his case.

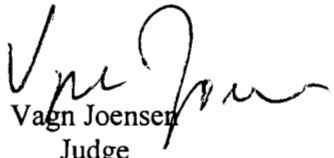
FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. **GRANTS** Rutaganda’s Motion; and
- II. **ORDERS** the Registrar to disclose to Rutaganda the closed session transcripts and sealed exhibits of Witness AWE in *Karemera et al.*

Arusha, 29 September 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Impugned Decision, para. 7.

¹² Rutaganda’s Motion, para. 9.

¹³ *The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3-T, Judgement, 6 December 1999, (“*Rutaganda Trial Judgement*”), paras. 387, 388, 405, 410, 428, 432.

¹⁴ See *Rutaganda Trial Judgement*, paras. 204, 225, 228.