



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: 5 November 2009

THE PROSECUTOR

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION TO MODIFY CONDITIONS OF
RECALL OF PROSECUTION WITNESS G**

Office of the Prosecution:

Don Webster
Arif Virani
Saidou N'Dow
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

INTRODUCTION

1. In a motion filed on 28 October 2009, Joseph Nzirorera seeks to modify the conditions placed upon the scope of Witness G's cross-examination when that witness is recalled on 9 November 2009.¹ The Prosecution opposes the Motion.²

DELIBERATIONS

2. Pursuant to an earlier order of this Chamber, the scope of the testimony on recall was limited to: (1) allegations made by Witness ALL-42 that Witness G was working for the RPF during the time he served as an officer of the National Committee of the *Interahamwe*; and (2) an exhibit containing the amount of money expended for the benefit of Witness G and his family by the ICTR.³

3. After the issuance of that Order, Witness G testified in the *Setako* trial stating: (1) that he is unable to verify the exhibit listing amounts of money paid to him because he is unfamiliar with it and that an agreement with his host country prohibits him from answering such questions;⁴ and (2) that Robert Kajuga was not present in Kigali until 12 April 1994⁵. Based upon Witness G's testimony in *Setako*, Nzirorera agrees to withdraw his request to cross-examine Witness G on the exhibit but requests that he be able to inquire of Witness G on recall as to Kajuga's arrival in Kigali in April of 1994.⁶

4. The Chamber recalls that it has previously "strictly limited" the remedial measure to recall Prosecution witnesses, such as Witness G, to those who Joseph Nzirorera "was not able to cross-examine fully *due to the missing exculpatory evidence from ALL-42.*"⁷ In that same Order, the Chamber refused a request by Nzirorera to question Witness G on information gleaned from an interview the Prosecution conducted with Witness G in the *Setako* case

¹ Joseph Nzirorera's Motion to Modify Conditions of Recall of Prosecution Witness G, filed on 28 October 2009 ("Motion").

² Prosecutor's Response to Nzirorera's Motion to Modify the Conditions of Recall of Prosecution Witness G, filed on 2 November 2009 ("Response").

³ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et. al."), Decision on Joseph Nzirorera's Motion to Recall Prosecution Witnesses ALG, AWD, and T, ("Nzirorera's Recall Motion") (TC), 16 April 2009, paras. 9, 11.

⁴ *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T ("*Setako*"), T. 21 April 2009, pp. 3, 4.

⁵ *Setako*, T. 22 April 2009, pp. 20, 21.

⁶ Motion, para. 7.

⁷ *Karemera et. al.*, Decision on Joseph Nzirorera's Motions to Subpoena Witnesses G and AWD for Interview, (TC), 10 February 2009, para. 17. (Italics in original).

which Nzirorera alleged appeared inconsistent with Witness G's testimony in this case.⁸ The Chamber explicitly held that it would not "permit Nzirorera to question G on the content of [that] supplemental submission, if it grant[ed] him the right to recall G for further cross-examination."⁹ The Chamber later stated that the remedial measures granted to Nzirorera were in response to the Prosecution's failure to timely disclose the evidence of Witness ALL-42 and that matters outside that limited scope were inappropriate for the recall of Witness G.¹⁰

5. The Chamber accepts Nzirorera's agreement to withdraw his request to cross-examine Witness G on the exhibit concerning payments. However, the modification sought by Nzirorera in relation to Witness G's knowledge of Robert Kajuga's arrival in Kigali does not fit within the scope of the previous Order.

6. Joseph Nzirorera submits that the testimony of Witness G regarding his knowledge of Kajuga's whereabouts in early April 1994 was not contained in any previous statements or testimony and that because Witness AJY testified more than two years after Witness G there was no opportunity for Nzirorera to ask Witness G about the allegations made by Witness AJY. However, the Chamber notes that accompanying the Prosecution's Pre-Trial Brief was a summary of the anticipated testimony of Witness AJY which references AJY's presence at Nzirorera's house on a Sunday prior to 12 April 1994 when Robert Kajuga arrived at the house.¹¹ Therefore, Nzirorera knew about AJY's anticipated testimony before Witness G was cross-examined and could have elicited testimony regarding Kajuga's arrival in Kigali if he wished. As such, the Chamber finds that Nzirorera has not advanced any reason to modify the conditions placed upon the recall of Witness G.

⁸ *Ibid.* at paras. 16, 17.

⁹ *Ibid.* at para. 17. The Trial Chamber affirmed this decision in Nzirorera's Recall Motion, para. 13.

¹⁰ Nzirorera's Recall Motion, para. 13.

¹¹ Prosecutor's Pre-Trial Brief, 27 June 2005.

FOR THESE REASONS, THE CHAMBER

DENIES Joseph Nzirodera's Motion to Modify Conditions of Recall of Prosecution Witness G.

Arusha, 5 November 2009, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]