



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
11-01-2010
(49267-49265)

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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: 11 January 2010

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

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

ORDER FOR THE TRANSFER OF DEFENCE WITNESSES FROM BENIN

Rules 54 and 90bis of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
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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

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INTRODUCTION

1. Joseph Nzirorera requests an order for the temporary transfer from the Republic of Benin of three of his witnesses, Juvénal Kajelijeli, Georges Rutaganda and François Karera for the purpose of testifying before the Chamber during the upcoming trial session.¹ The three witnesses are persons who have been convicted by this Tribunal and who are currently serving their sentence in the Republic of Benin.²

DELIBERATIONS

2. Rule 90 *bis* (B) sets two conditions for such an order: first, that “the detained witness is not required for any criminal proceedings in the territory of the requested State during the period the witness is required by the Tribunal”; and second, that the “[t]ransfer ... does not extend the period of his detention as foreseen by the requested State”. Furthermore, Article 4(2) of the agreement between the United Nations and the Republic of Benin specifically provides for the temporary transfer of a convicted person, if the Tribunal orders that the convicted person appear as a witness in a trial before the Tribunal.³

3. The Chamber has received no information from Joseph Nzirorera with respect to either criteria. However, the three witnesses are persons who have been convicted by this Tribunal and who are serving their sentence according to an agreement between the Tribunal and the Republic of Benin. Consequently, the Chamber requests the Registry to confer with the relevant authorities of the Republic of Benin and ascertain whether the requirements of Rule 90 *bis* (B) are met. In particular, the Registry is requested to ascertain whether Juvénal Kajelijeli, Georges Rutaganda and François Karera are required for any criminal proceedings in Benin from 1 February to 19 March 2010 and whether the transfer of Kajelijeli, Rutaganda and Karera who are serving a sentence of 45 years imprisonment for Kajelijeli,⁴ and life imprisonment for the two other witnesses, will extend their period of detention.

¹ Joseph Nzirorera’s Motion for Order to Transfer Witnesses from Benin, filed on 1 December 2009.

² *The Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A, Decision on the Enforcement of Sentence (President), 18 May 2009; *The Prosecutor v. Georges Rutaganda*, Case No. ICTR-96-3, Decision on the Enforcement of Sentence (President), 18 May 2009; *The Prosecutor v. François Karera*, Case No. ICTR-01-74, Decision on the Enforcement of Sentence (President), 18 May 2009. All three convicted persons were transferred to Benin on 27 June 2009.

³ Agreement Between the Government of the Republic of Benin and the United Nations on the Enforcement of Sentences of the International Criminal Tribunal for Rwanda, 26 August 1999.

⁴ *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement (AC), 23 May 2005, p. 119; *Georges Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, Judgement (AC), 26 May 2003, p. 170; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement (AC), 2 February 2009, p. 126.

4. Should the Benin authorities confirm that the Rule 90 *bis* (B) are met, the Chamber finds that a transfer order is warranted.

FOR THE ABOVE REASONS, THE CHAMBER

I. REQUESTS the Registrar to confer with the relevant authorities of the Republic of Benin and confirm that Juvénal Kajelijeli, Georges Rutaganda and François Karera are not required in any trial or judicial proceedings in Benin from 1 February to 19 March 2010 and that his transfer to Arusha will not prolong their detention in Benin;


II. ORDERS, conditional upon the agreement of the Government of Benin and confirmation that the requirements of Rule 90 *bis* (B) are met; that Juvénal Kajelijeli, Georges Rutaganda and François Karera shall be temporarily transferred to the Detention Unit of the Tribunal in Arusha pursuant to Rule 90 *bis* by 1 February 2010;

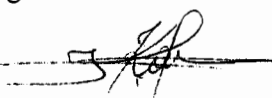
III. REQUESTS the Government of Benin to facilitate the transfer in cooperation with the Registrar and the Tanzanian Government;

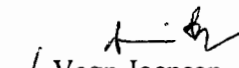
IV. INSTRUCTS the Registrar to:

- A) transmit this decision to the Governments of Benin and Tanzania;
- B) ensure the proper conduct of the transfer, including the supervision of the witnesses in the Tribunal's detention facilities;
- C) remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the timing of the temporary detention, and as soon as possible, inform the Trial Chamber of any such change; and,
- D) ensure that the return travel of the witnesses is facilitated as soon as practically possible after their testimony has ended.

Arusha, 11 January 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

