



UNITED NATIONS
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ICTR-98-44-T
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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: 12 January 2010

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THE PROSECUTOR

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR VIDEO-LINK: ALPHONSE
NTILIVAMUNDA**

Rule 54 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. The Chamber previously found the written statement of Alphonse Ntilivamunda admissible, subject to certification of the statement by the Registrar, and subject to cross-examination of the Witness by the Prosecution, pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence ("Rules").¹ In a Motion dated 2 November 2009, Joseph Nzirorera moved that the cross-examination of Ntilivamunda be conducted via video-link.² The Prosecution leaves the matter to the discretion of the Chamber.³

DELIBERATIONS

2. The Chamber notes that it has previously considered that factors in deciding whether to authorise testimony by video-link include: the importance of the testimony, the inability or unwillingness of the witness to attend, and whether good reason has been adduced for the inability or unwillingness to attend.⁴ When a witness refuses to appear, this refusal must be justified and genuine, giving a Chamber reason to believe that he or she will not testify unless a Chamber allows the witness to do so via video-link.⁵

3. Joseph Nzirorera requests the video-link cross-examination of Alphonse Ntilivamunda based upon Ntilivamunda's indication that he is unwilling to travel to Arusha to give testimony because of exclusion proceedings that are currently underway against him in Belgium.⁶ According to Nzirorera, Ntilivamunda communicated to a representative of the Registry his unwillingness to travel when his statement was certified in September 2009.⁷ During an interview with Nzirorera's Defence team in 2008, Ntilivamunda also expressed his unwillingness to travel to Arusha.⁸

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera *et. al.*"), ICTR-98-44-T, Decision on Joseph Nzirorera's Motions for Admission of Witness Statements and Expert Testimony (TC), 15 July 2009, paras. 30, 31.

² Joseph Nzirorera's Motion for Video-Link: Alphonse Ntilivamunda, filed 2 November 2009.

³ Prosecutor's Response to Joseph Nzirorera's Motion for Testimony by Video-Link: Alphonse Ntilivamunda, filed 9 November 2009.

⁴ *Karemera et. al.*, Decision on Édouard Karemera's Motion to Allow Defence Witnesses to Testify via Video-Link, 2 April 2008, para. 2.

⁵ *Id.*

⁶ *Ibid.* at para. 4.

⁷ *Id.*

⁸ Annex A to Joseph Nzirorera's Motion for Video-Link: Alphonse Ntilivamunda, filed 2 November 2009.


4. The Prosecution recognizes that this Chamber has previously granted requests for testimony by video-link where it is known that the proposed witness is subject to immigration proceedings.⁹ However, noting that Joseph Nzirorera has not submitted any tangible evidence regarding Alphonse Ntilivamunda's immigration status in Belgium, the Prosecution states that it would be prudent to require Nzirorera to demonstrate an objective basis for Ntilivamunda's fear of leaving his country of residence to testify before deciding the video-link motion.¹⁰

5. While the Chamber has no reason at present to disbelieve Alphonse Ntilivamunda's claim that he is unable to leave Belgium, it believes it necessary to require objective documentation of a witness' inability or unwillingness to travel and the reasoning behind that refusal before granting a motion for video-link testimony. The Chamber does not agree with the Prosecutor that a sworn affidavit from the witness would provide the necessary documentation as Ntilivamunda's subjective belief that he is unable to re-enter Belgium after testifying in Arusha may be misplaced or erroneous. At this time, Joseph Nzirorera has produced no objective evidence to support Ntilivamunda's claim that he would be unable to re-enter Belgium once leaving the country. Neither has Nzirorera provided the Witness and Victims Support Section (WVSS) with all the Witness's personal data required for the WVSS to inquire the Belgian immigration authorities about the Witness's ability to return to Belgium after testifying in Arusha. For these reasons, there is no basis for granting Nzirorera's motion at this time.

FOR THESE REASONS, THE CHAMBER


DENIES Joseph Nzirorera's Motion in its entirety.

Arusha, 12 January 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
ICTR TPIR
Judge

[Seal of the Tribunal]


Vagn Joensen
Judge

⁹ Prosecutor's Response to Joseph Nzirorera's Motion for Testimony by Video-Link: Alphonse Ntilivamunda, filed 9 November 2009, para. 4.

¹⁰ *Ibid.* at para. 6.