



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
21-04-2010
(50919 - 50916)

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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: 21 April 2010

JUDICIAL SECRETARIAT
ICTR
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THE PROSECUTOR

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S SECOND MOTION FOR VARIATION OF
HIS WITNESS LIST**

Rule 73 ter 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. In a motion filed on 29 March 2010, Joseph Nzirorera seeks leave to vary his witness list by adding one new witness.¹ The Prosecution has filed a response.²

DELIBERATIONS

2. Rule 73 *ter* (E) of the Rules of Procedure and Evidence provides that, “[a]fter commencement of the Defence case, the Defence, if it considers it to be in the interests of justice, may move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.” Trial Chambers have allowed either party to vary its witness list upon a showing of good cause where the requested variance is in the interests of justice.³ Relevant factors for the variation of a witness list include the materiality and probative value of the testimony in relation to existing witnesses and allegations in the Indictment, the complexity of the case, prejudice to the opposing party, justifications for the late addition of witnesses, and delays in the proceedings.⁴

3. The Prosecutor submits that he has no objection to Joseph Nzirorera’s request to vary his witness list as long as the variation of the witness list and the addition of Édouard Mutabazi to his witness list will not result in Nzirorera exceeding the number of witnesses and the time allocated to him by the Chamber⁵. Nonetheless, the Chamber will decide upon the matter after due consideration of the parties submissions.

¹ Joseph Nzirorera’s Second Motion to Vary his Witness list, filed on 29 March 2009, para. 29, (“Nzirorera’s Motion”).

² Prosecutor’s Response to Joseph Nzirorera’s Second Motion to vary his Witness List, filed on 6 April 2010, (“Prosecutor’s Response”).

³ *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jérôme-Clément Bicamumpaka and Prosper Mugiraneza (“Bizimungu et al.”)*, Case No. ICTR-99-50, Decision on Casimir Bizimungu’s Motion to vary Witness List; and to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony (TC), 1 May 2008, para. 13; *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera (“Karemera et al.”)*, Case No. ICTR-98-44-T, Decision on Prosecutor’s Motion to Vary its Witness List (TC), 2 October 2006, para. 3; *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva (“Bagosora et al.”)*, Case No. ICTR-98-41-T, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73 *bis* (E) (TC), 26 June 2003, para. 13; *The Prosecutor v. Alfred Musema*, Case No. ICTR. 96-13-T, Decision on the Prosecutor’s Request for Leave to Call Six New Witnesses (TC), 20 April 1999, paras. 4, 13.

⁴ *Bizimungu et al.*, Decision on Casimir Bizimungu’s Motion to vary Witness List; and to Admit Evidence of Witnesses in Written Form in Lieu of Oral Testimony (TC), 1 May 2008, para. 13; *Bagosora et al.*, Decision On Bagosora Motion To Present Additional Witnesses And Vary Its Witness List (TC), 17 November 2006, para. 2; *The Prosecutor v. Jean Mpambara*, Case No. ICTR-2001-65-T, Decision on the Prosecution’s Request to Add Witness AHY (TC), 27 September 2005, para. 4.

⁵ Prosecutor’s Response, para. 3.

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4. It appears from Joseph Nzirorera's submissions that Édouard Mutabazi will testify that he was 11 years old when he left Kigali for Gisenyi with his relatives around 20 May 1994 and that his own life was saved by Nzirorera when the latter's convoy was passing a roadblock where Édouard Mutabazi was about to be killed.⁶

5. The Chamber, after careful examination of Joseph Nzirorera's submissions and the supporting documents presented by him⁷ finds that the prospective testimony of Édouard Mutabazi is material to the case and that it can be relevant to rebut the allegations made in the Indictment that Nzirorera instigated, planned, ordered, aided and abetted, and favored killings in Rwanda in 1994⁸ and to show Nzirorera's lack of control over persons manning the roadblocks since Nzirorera allegedly had to negotiate the payment of money in order for Mutabazi to be released⁹. The Chamber is also satisfied that Nzirorera has shown good cause by explaining that Mutabazi was not on his witness list because his identity was unknown to him until 15 March 2010 when Mutabazi contacted his Defence Counsel by e-mail.¹⁰ The Chamber further notes that the addition of Mutabazi to Nzirorera's witness list will not result in exceeding the "approximately 55 witnesses" allocated to him by the Chamber¹¹ since certain witnesses in Nzirorera's witness list will not be called as initially planned¹² and that it is therefore unlikely to require additional time above the time already allocated to Nzirorera for his defence case. Consequently, the Chamber finds it to be in the interest of justice to vary Nzirorera's witness list by adding Édouard Mutabazi.

FOR THESE REASONS, THE CHAMBER

GRANTS Joseph Nzirorera's Motion to vary his witness list;

ORDERS that Édouard Mutabazi testify consecutively with the other witnesses of Joseph Nzirorera; and

⁶ Nzirorera's Motion, para. 3 and Annex "A".

⁷ The Chamber refers to annexes "A" and "B" to Nzirorera's Motion. Annex "A" corresponds to a statement representing the prospective testimony of Édouard Mutabazi while annex "B" is a copy of an e-mail from Mr. Édouard Mutabazi to the Defense of Nzirorera's Defense Counsel on 14th March 2010.

⁸ It is alleged in para. 34 and following of the Indictment that Joseph Nzirorera and his co-accused planned, instigated, ordered, committed, or otherwise aided and abetted the killing or causing serious bodily or mental harm to the members of the Tutsi group.

⁹ It is alleged in para. 11 of the Indictment that Joseph Nzirorera and his co-accused exercised effective control over the *Interahamwe*.

¹⁰ See Annex «B» to Nzirorera's Motion, para. 4.


¹¹ *Karemera et al.*, Order to Joseph Nzirorera to Reduce his Witness List (TC), 24 October 2008, p. 5.

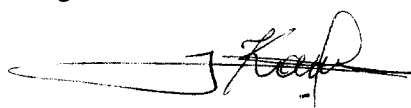
¹² See, *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Variation of his Witness List (TC), 7 April 2010, para. 10.

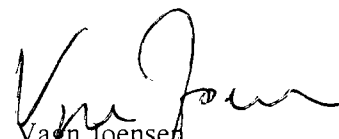
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ORDERS that Joseph Nzirorera disclose to the other Parties in this trial the identifying information of Édouard Mutabazi.

Arusha, 21 April 2010 done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

