



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
14-05-2010
(51011-51009)

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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: 14 May 2010

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S FIFTH MOTION FOR TRANSFER OF
DETAINED WITNESSES FROM RWANDA**

Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
Sunkarie Ballah-Conteh
Takeh Sendze
Jean-Baptiste Nsanzimfura

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. On 26 April 2010, Joseph Nzirorera filed a motion pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence requesting the Chamber to order the temporary transfer of four detained witnesses who are scheduled to testify in Nzirorera's defence case.¹ Nzirorera contends that the four witnesses, who are listed in a confidential annex filed with the Motion², are expected to testify during the period 5 June 2010 to 18 July 2010.³ The Prosecution has not responded to the Motion.

DELIBERATIONS

2. The Chamber recalls that Joseph Nzirorera is expected to finish the presentation of his case by 1 July 2010, while Matthieu Ndirumpatse's case is starting on 5 July 2010.⁴

3. Pursuant to Rule 90 *bis* (A), any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal. Rule 90 *bis* (B) sets two conditions for a transfer order in such context: 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".

4. Joseph Nzirorera indicates that he has addressed a letter to the Rwandan Minister of Justice requesting confirmation of the availability of the four witnesses but that he has not yet received a response to his letter.⁵ Nzirorera also undertakes to forward the response of the Minister of Justice to the Chamber once he receives it.⁶

5. In order to minimize any delay in the trial, the Chamber considers that a transfer order for the witnesses is warranted so that the Witnesses and Victims Support Section may start consulting with the relevant Rwandan authorities in order to ensure the timely presence of the four witnesses. This, however, will be subject to confirmation by the Rwandan authorities that the witnesses are not required in any trial or judicial proceedings in Rwanda during the relevant period, and that their transfer to Arusha will not prolong their detention in Rwanda.

¹ Joseph Nzirorera's Fifth Motion for Transfer of Detained Witnesses from Rwanda, filed on 26 April 2010 ("Motion").

² Confidential Annex to Joseph Nzirorera's Motion for Transfer of Detained Witnesses from Rwanda, filed on 26 April 2010 ("Confidential Annex"), p. 2. The Confidential annex contains a copy of the Letter sent by Joseph Nzirorera's Defense Council to the Minister of Justice of Rwanda on 26 April 2010 requesting him to indicate whether the witnesses in question meet the condition for temporary transfer under Rule 90 *bis* of the Rules of Procedure and Evidence of the Tribunal.

³ Confidential Annex, p. 2.

⁴ *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Scheduling Order (TC), 10 May 2010 ("Scheduling Order on 10 May 2010"), para. 2.

⁵ Motion, para. 2.

⁶ *Id.*

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FOR THESE REASONS, the CHAMBER,

I. GRANTS Joseph Nzirorera's Motion as follows:

II. REQUESTS the Registrar, pursuant to Rule 90 *bis*, to make the necessary arrangements for the temporary transfer of the four detained witnesses to the United Nations Detention Facility ("UNDF") in Arusha, as soon as possible and before the end of Joseph Nzirorera's case, after having verified, in coordination with the relevant Rwandan authorities, that these witnesses are not required in any trial or judicial proceedings in Rwanda during the aforementioned period, and that their transfer to Arusha will not prolong their detention in Rwanda;

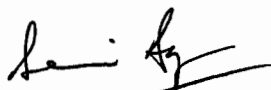
III. ORDERS Joseph Nzirorera to provide the Chamber, as soon as possible, with any additional supporting material or information as to the availability of the witnesses in accordance with the requirements set out by Rule 90 *bis* (B);

IV. REQUESTS the Registrar to ensure that the return travel of the witnesses will be facilitated as soon as practically possible after their testimony has been completed;

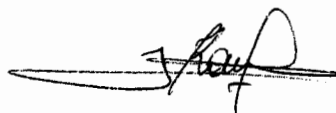
V. REQUESTS the Governments of the Republic of Rwanda and the United Republic of Tanzania to cooperate with the Registrar in the implementation of this Order; and,

VI. REQUESTS the Registrar to cooperate with the authorities of the Governments of Rwanda and the United Republic of Tanzania to ensure the proper conduct of the transfer to and detention of the witnesses at the UNDF and to inform the Chamber of any changes in the conditions which may affect the length of the stay of the concerned witnesses in Arusha.

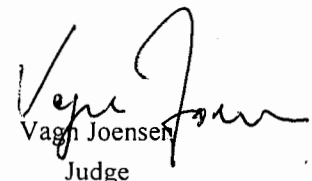
Arusha, 14 May 2010, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagn Joensen
Judge

