

ICTR-98-44-T
17-05-2010
(51020-51018)

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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: 17 May 2010

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR ADMISSION OF THE
STATEMENT OF THÉOGÈNE BAMPOREYE**

Rule 92 bis (B) and (C) 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

by

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INTRODUCTION

1. By decision of 15 July 2009, the Chamber declared admissible, pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, a statement submitted by Joseph Nzirorera and authored by Théogène Bamporeye, subject to its certification, to the disclosure of the identifying information of the author and to the Witness appearing for cross-examination.¹ Subsequently, Nzirorera submitted the required certification and identification sheet.² Following Bamporeye's death, Nzirorera presently moves this Chamber for the admission of his written statement under Rule 92 *bis* (C).³ The Prosecution opposes the motion.⁴

DELIBERATIONS

2. Joseph Nzirorera submits that Bamporeye's statement should be admitted pursuant to Rule 92 *bis* (C) because "there is sufficient indicia of reliability to admit the statement now that it has been determined that he is deceased and cannot be cross-examined on his statement".⁵

3. Pursuant to Rule 92 *bis* the evidence of a witness may under certain conditions be admitted into evidence in the form of a written statement in lieu of oral testimony. Paragraph (A) of the Rule lists the factors in favour and against the admission and paragraph (B) provides that the written statement, if admissible pursuant to paragraph (A), must be certified in a certain way. Paragraph (C) relates to paragraph (B) as it provides that "[a] written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died" and certain further conditions are met.

4. In the present case, paragraph (B) of Rule 92 *bis* has been complied with, wherefore paragraph (C) of the Rule is not applicable.

5. The Chamber notes that Bamporeye's statement, if believed, would impeach the credibility of oral testimony of Prosecution witnesses wherefore the Chamber in its Original Decision found that there was an overriding public interest in requiring the Witness to appear for cross-examination as a condition for the admission of his written statement. There is no

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-4-T ("Karemera *et al.*"), Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Witness Testimony (TC), 15 July 2009 ("Decision of 15 July 2009 on Joseph Nzirorera's Motions pursuant to Rule 92 *bis*").

² *Karemera et al.*, Decision Following Joseph Nzirorera's Submission of Rule 92 *bis* Certified Statements (TC), 10 September 2009 ("Decision of 10 September 2009"), para. 4.

³ Joseph Nzirorera's Motion for Admission of Statement of Théogène Bamporeye, filed on 12 April 2010 ("Nzirorera's Motion").

⁴ Prosecutor's Response to Joseph Nzirorera's Motion for Admission of Statement of Théogène Bamporeye ("Prosecutor's Response").


⁵ Nzirorera's Motion, para. 8.

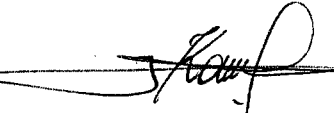
legal basis to lower the threshold pursuant to Rule 92bis (A) for the admission of a written statement because the witness has died or is otherwise unavailable for cross-examination.

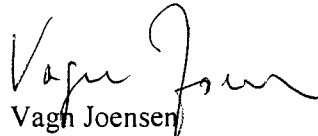
FOR THE ABOVE REASONS, THE CHAMBER

DENIES Joseph Nzirorera's Motion.

Arusha, 17 May 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagh Joensen
Judge

