

ICTR-98-44-T
23-08-2010
(51827 - 51824)

51827
A



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: 23 August 2010

THE PROSECUTION

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE**

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVES
2010 AUG 23 P 11:31

**DECISION ON THE PROSECUTOR'S MOTION TO ADMIT RWANDAN PROCÈS-
VERBAUX CONCERNING WITNESS GAY**

Rule 89 (C) of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Sunkarie Ballah-Conteh
Takeh Sendze
Jean-Baptiste Nsanzimfura
Maria Wilson

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Pete

INTRODUCTION

1. On 10 March 2010, the Prosecution filed a confidential motion to admit two Rwandan *procès-verbaux* ("PV") – one from Witness GAY and one from another declarant.¹ The Prosecution stated that because of technical issues, these statements had only recently been found and duly disclosed. Joseph Nzirorera opposes the motion on the grounds of prejudice with respect to Witness GAY's statement and because he alleges there is no basis to admit a third-party statement with respect to the other PV.² The Prosecution submitted a confidential response on 17 March 2010.³ In keeping with its policy of filing as many decisions as possible as public documents so as to be as transparent as possible to the general public the Chamber publicly files this decision, omitting any confidential material.

2. Joseph Nzirorera was terminated from these proceedings on 12 August 2010 by virtue of his death.⁴ Based on the Chamber's oral decision of 23 August 2010, the Chamber deems it to be in the interests of justice to render this Decision as it deals with the body of evidence upon which the Chamber will ultimately deliberate.

DELIBERATIONS

3. The Chamber recalls that the admissibility of evidence is governed by Rule 89 (C) which allows the Chamber to admit any relevant evidence it deems to have probative value.⁵ In order to establish that evidence is relevant, the moving party must show that a connection exists between the evidence sought to be admitted and the proof of an allegation sufficiently pleaded in the indictment.⁶ To establish the probative value of the evidence, the moving party

¹ Prosecutor's Motion to Admit Rwandan *procès verbaux* concerning GAY, filed on 10 March 2010 ("Motion").

² Joseph Nzirorera's Response to Prosecution Motion to Admit Witness GAY Documents, filed on 12 March 2010 ("Response").

³ Prosecution's Consolidated Response to Joseph Nzirorera's 29th Notice of Rule 66 Violation and Reply to Nzirorera's Response to Prosecution Motion to Admit GAY Statements, filed on 17 March 2010.

⁴ *The Prosecutor v Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al."), Decision Relating to Registrar's Submission Notifying the Demise of Accused Joseph Nzirorera, filed 12 August 2010.

⁵ See also *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on the Prosecution Motion for Admission Into Evidence of UNAMIR Documents (TC), 20 October 2007, paras. 5-7; *Karemera et al.*, Decision on the Joseph Nzirorera's Motion for Admission of UNAMIR Related Documents (TC), 28 November 2007, para. 4.

⁶ *Karemera et al.*, Decision on the Prosecution's Motion for Admission of Certain Exhibits into Evidence (TC), 22 January 2008, ("Decision on Admission of Certain Exhibits"), para. 6; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Authored by Enoch Ruhigira (TC), 26 March 2008, para. 3; *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Admit Documents Obtained from the RPF Archives in Kigali (TC), 13 February 2009, para. 3.

must show that the evidence tends to prove or disprove an issue.⁷ A factor in the assessment of the relevance and probative value of evidence is the requirement that it be *prima facie* credible; that is, it must have sufficient indicia of reliability.⁸ The admissibility of evidence should not be confused with the assessment of weight to be accorded to that evidence, or even whether its contents are truthful or accurate,⁹ which is an issue to be decided by the Chamber after hearing the totality of the evidence.¹⁰

4. On 28 September 2007, Witness GAY's statement was admitted pursuant to Rule 92 *bis*. Subsequently, on 28 October 2009, the Chamber granted Joseph Nzirorera's motion that Witness GAY appear for cross-examination. The Chamber recalls that 14 of Witness GAY's prior statements were admitted into evidence by the agreement of the parties.¹¹ The Prosecution did not tender into evidence the PV at issues at the time of her cross-examination as the Prosecution had not yet located it in their archives.¹²

5. Joseph Nzirorera alleges that Witness GAY's PV statement contains discrepancies such as the fact that she claimed to have been raped by an individual, but failed to mention she had been raped by another individual and provides a different location for the place where she alleged to have been raped by a third individual. Nzirorera contends that admission of Witness GAY's PV without the opportunity to cross-examine her on these issues would prejudice him.¹³ However, the Chamber recalls that Joseph Nzirorera cross-examined Witness GAY extensively on the issues he raises as discrepancies in Witness GAY's PV.¹⁴ As the Chamber admitted the other statements of Witness GAY by agreement of the parties, the Chamber finds that it is in the interest of justice to also admit this PV in order to assess Witness GAY's overall credibility. The PV at issue in this motion is so similar to the other previous statements admitted and discloses no information that was not already available to

⁷ *Karemera et al.*, Decision on the Prosecution Motion for Admission Into Evidence of Post-Arrest Interviews with Joseph Nzirorera and Mathieu Ngirumpatse (TC), 2 November 2007, para. 4; *Karemera et al.*, Interim Order on the Prosecutor's Motion for Admission of Documents (TC), 8 August 2007, para. 7 (and cases cited therein).

⁸ *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze and Anatole Nsengiyumva*, Case No. ICTR-98-41 ("*Bagosora et al.*"), Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole (TC), 13 September 2004, para. 8.

⁹ *Bagosora et al.*, Case No. ICTR-98-41, Decision on Request to Admit United Nations Documents into Evidence under Rule 89(C) (TC), 25 May 2006, para. 4.

¹⁰ *Karemera et al.*, Decision on Admission of Certain Exhibits (TC), para. 6; *Prosecutor v. Simba*, Case No. ICTR-01-76-T, Decision on the Admission of Prosecution Exhibits 27 and 28 (TC), 31 January 2005, para.

12.

¹¹ T. 18 Jan. 2010, pp. 19, 20.

¹² Motion, para. 7.

¹³ Reply, para. 5.

¹⁴ T. 18 Jan. 2010, pp. 23-27.

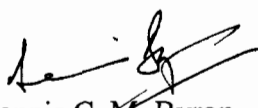
the Defence teams at the time of her cross-examination that its admission does not prejudice the Accused.

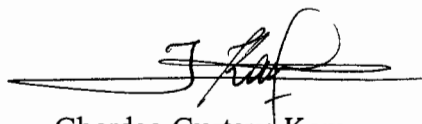
6. Turning to the second Rwandan PV offered by the Prosecution, it is offered as evidence that the alleged rapes of Witness GAY were reported to the statement's declarant by April 1997.¹⁵ The Chamber does not find this PV admissible as it is a third party statement, is not offered for the truth of its contents, and is only tendered for admission to evaluate GAY's credibility.¹⁶

FOR THE ABOVE REASONS, THE CHAMBER

- I. **GRANTS** the Prosecution's Motion in part;
- II. **ADMITS** into evidence the *procès-verbal* of Witness GAY, dated 9 April 1996; and
- III. **DENIES** the Motion in all other respects.

Arusha, 23 August 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



¹⁵ Response, para. 34.

¹⁶ See e.g. *Karemera et al.*, Decision on Prosecution Submission on Entering into Evidence Exhibits Arising from the Prosecution Cross-Examination of Karemera Defence Witnesses KBL, LSP, and TXL, and Joseph Nzirorera's Eighteenth Motion for Remedial and Punitive Measures for Violation of Rule 66 (TC), 10 November 2008, para. 9.