

ICTR-98-44-T
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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH

Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date filed: 25 August 2010

THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE

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DECISION ON MATTHIEU NGIRUMPATSE'S MOTION FOR TRANSFER OF

DETAINED WITNESSES

Rule 90 bis of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Counsel for Matthieu Ngirumpatse:
Chantal Hounkpatin and Frédéric Weyl

CIH10-0136 (E)

Translation certified by LSS, ICTR

INTRODUCTION

1. On 9 August 2009, Matthieu Ngirumpatse filed a motion asking the Chamber to issue an order pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence ("the Rules") requesting the Rwandan authorities to temporarily transfer two detained witnesses to the Tribunal to testify in his case.¹ The names of the witnesses in question, namely Witnesses MCE and XX7 on Matthieu Ngirumpatse's list of witnesses, are indicated in a confidential annex to the motion.² The Prosecution has not filed any response.

DELIBERATIONS

2. Pursuant to Rule 90 *bis* (A) of the Rules, 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. According to Rule 90 *bis* (B) of the Rules, the transfer order shall be issued by the Chamber only if: (i) the presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal; (ii) transfer of the witness does not extend the period of his detention as foreseen by the requested State.

3. Matthieu Ngirumpatse explains in his motion that the witnesses whose transfer is requested are scheduled to testify at the session beginning on 23 August 2010³ and that he has addressed a letter to the Rwandan Minister of Justice requesting confirmation of the timely availability of the detained witnesses in question.⁴ A copy of the letter is annexed to his motion.⁵ He also undertakes to inform the Chamber once he receives a response from the Rwandan Minister of Justice.⁶

4. The Chamber is of the view that such an order is warranted so as to minimize any delay in the trial and to enable the Witnesses and Victims Support Section to carry out necessary consultations with the relevant Rwandan authorities in order to ensure the timely presence of the two witnesses.⁷ However, the execution of such an order shall be subject to confirmation by the Rwandan authorities that the witnesses concerned are not required in any ongoing trial or judicial proceedings in Rwanda during the period they are required by the Tribunal, on the one hand, and that their transfer to Arusha will not extend the period of their detention as foreseen by the relevant authorities of Rwanda, on the other hand.

¹ *Requête de Matthieu Ngirumpatse aux fins de transfert d'un témoin détenu*, 9 August 2010 ("Motion").

² *Annexe confidentielle I à la Requête de Matthieu Ngirumpatse aux fins de transfert d'un témoin détenu*, 9 August 2010, p. 2. It should be noted that Matthieu Ngirumpatse refers to this annex in his motion as his Annex 2 but in the title of the same document, it is presented as Annex I to the Motion.

³ Motion, para. 3.

⁴ *Idem*.

⁵ Letter addressed by Counsel for Matthieu Ngirumpatse to the Rwandan Minister of Justice on 9 August 2010, annexed to the Motion.

⁶ Motion, para. 5.

⁷ See *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), "Decision on Joseph Nzirorera's Fifth Motion for Transfer of Detained Witnesses from Rwanda", 14 May 2010, para. 5.

For these reasons,

The Chamber

- I. **Grants** Matthieu Ngirumpatse's motion under the following conditions:
- II. **Requests** the Registry to take all necessary measures pursuant to Rule 90 *bis* of the Rules to temporarily transfer Witnesses MCE and XX7 to the Detention Unit of the Tribunal ("UNDF") in Arusha, as promptly as possible, preferably before the end of the session beginning on 23 August 2010 and ending on 30 September 2010, subject to first ensuring, in coordination with the relevant authorities of Rwanda, that the witnesses concerned are not required in any trial or judicial proceedings in Rwanda during the period they are required by the Tribunal and that their transfer to Arusha will not extend the period of their detention in Rwanda.
- III. **Orders** Matthieu Ngirumpatse to provide the Chamber, as soon as possible, with any documentation or additional information likely to guarantee the availability of the witnesses concerned in compliance with the requirements of Rule 90 *bis* (B) of the Rules.
- IV. **Requests** the Registry to take the necessary measures to ensure that the two witnesses travel back to Rwanda, as soon as practically possible, after they have testified. And,
- V. **Requests** the Registry to cooperate with the authorities of the Republic of Rwanda and the United Republic of Tanzania to ensure that the witnesses concerned are transferred to and detained at the UNDF, and to inform the Chamber of any change that might affect their period of stay in Arusha.

Done at Arusha on 25 August 2010

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Judge Gberdao Gustave Kam

[Signed]

Judge Vagn Joensen

[Seal of the Tribunal]
