

ICTR-98-44-T  
14-6-2011  
(53829-53826)

53829



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: 19 November 2010

**THE PROSECUTOR**

v.

**ÉDOUARD KAREMERA and  
MATTHIEU NGIRUMPATSE**

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**DECISION ON MOTION BY MATTHIEU NGIRUMPATSE FOR THE ADMISSION  
OF CERTIFIED WRITTEN STATEMENTS AND RECONSIDERATION OF THE  
ADMISSION OF SOME WRITTEN STATEMENTS**

*Rule 92 bis of the Rules of Procedure and Evidence*

Office of the Prosecutor:  
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CIII10-0180 (E)

Translation certified by LSS, ICTR

## INTRODUCTION

1. On 11 November 2009<sup>1</sup> and 1 September 2010<sup>2</sup>, the Chamber ruled admissible written statements filed by Mathieu Ngirumpatse, subject to their certification pursuant to Rule 92 *bis* B) of the Rules. Mathieu Ngirumpatse now applies for admission of the statements for which certification has been granted and requests the Chamber to reconsider its decision on two statements following a change in circumstances<sup>3</sup>. The Prosecutor raises no objection to the application.<sup>4</sup>

## DELIBERATION

*Certified written statements of BHF, TUC, DH, JCF, FRA, PVB, FRW, BST, RRE, CHJ, HBZ, PE5, GRT, 520 and PNE*

2. The Chamber notes that the 15 certified written statements filed by Mathieu Ngirumpatse are among the 27 statements it already ruled admissible, subject to their certification pursuant to Rule 92 *bis* B) and to the filing of the identification sheets of the authors of the statements. The Chamber further notes that each of the 15 written statements is signed by their authors, who attest that, to the best of their knowledge and belief, the contents are true and accurate. Appended to each written statement is a witness identification sheet and a declaration witnessed by a Presiding Officer appointed by the Registrar of the Tribunal. The Chamber notes that addenda to correct or clarify the original statements have been appended to the statements of JCF, PVB, FRW and BST. Point 1 of PNE's addendum relates to the fabrication of evidence, in fact, evidence that was already omitted from the statements ruled admissible. Point 1 of PNE's addendum should thus not be admitted. The Chamber further notes that, in compliance with its order, Mathieu Ngirumpatse has redacted the statements of BHF, PNE, JCF, FRW and PE5. The Chamber therefore decides to admit these statements, in accordance with established procedure.

*Reconsideration of the written statements of TE and RGF*

3. The Chamber already found the statements of TE and RGF admissible, subject to the removal of evidence therein relating to the acts and conduct of the Accused as charged in the Indictment and to certification of the statements pursuant to Rule 92 *bis* B)<sup>5</sup>.

4. Mathieu Ngirumpatse attached to his application the death certificate of witness RGF. Mathieu Ngirumpatse further submitted that witness TE has left his country of residence and

<sup>1</sup> *The Prosecutor v. Édouard Karemera and Mathieu Ngirumpatse*, Case N° ICTR-98-44-T, "Decision on Motion by Mathieu Ngirumpatse for the Admission of Statements pursuant to Rule 92 *bis* of the Rules and for the Protection of Witnesses", 11 November 2009 ("Decision of 11 November 2009").

<sup>2</sup> "*Karemera et Ngirumpatse, Décision sur la requête de Mathieu Ngirumpatse visant à l'admission de déclarations sur le fondement de l'article 92 bis du Règlement*", 1 September 2010.

<sup>3</sup> *Requête de Mathieu Ngirumpatse suite à la certification de déclarations écrites conformément aux décisions de la Chambre*, dated 29 October 2010 and filed on 1 November 2010.

<sup>4</sup> Prosecutor's Response to "*Requête de Mathieu Ngirumpatse suite à la certification de déclarations écrites conformément aux décisions de la Chambre*", filed on 8 November 2010.

<sup>5</sup> Decision of 11 November 2009, paras. 24 and 31.

is not known to be at any specific location. Mathieu Ngirumpatse applies for admission of the written statements of TE and RGF, pursuant to Rule 92 *bis* C) of the Rules.

5. The Chamber has inherent power to reconsider its own decisions. However, the Chamber may only do so under exceptional circumstances.<sup>6</sup> The Chamber may thus reconsider its decision where a new fact previously unknown to the Chamber has been discovered; where there is reason to believe that the Chamber erred in its original decision or that such a decision amounted to an abuse of power occasioning a miscarriage of justice and therefore warranting reconsideration.<sup>7</sup>

6. The Chamber notes that new facts have emerged regarding the situation of TE and RGF, subsequent to its decision of 11 November 2009. Noting further that it is the position of the Prosecutor that admission of the written statements pursuant to Rule 92 *bis* C) of the Rules is not prejudicial to its case,<sup>8</sup> the Chamber decides to reconsider its Decision of 11 November 2009 and to admit the written statements of TE and RGF, pursuant to Rule 92 *bis* C).

*Written Statement of FRK*

7. Lastly, Mathieu Ngirumpatse argues that witness FRK is seriously ill and cannot be subjected to the certification process.<sup>9</sup> However, the Chamber is informed that FRK's statement was certified since the motion was filed. Mathieu Ngirumpatse's application in this regard is therefore moot.

**FOR THESE REASONS, THE CHAMBER**

**ADMITS** the written statements of Witnesses BHF, TUC, DH, JCF, FRA, PVB, FRW, BST, RRE, CHJ, HBZ, PE5, GRT and 520, together with their addenda where applicable;

**ALSO ADMITS** the statement of Witness PNE, save Point 1 in its addendum;

**RECONSIDERS** its Decision of 11 November 2009 and

**ADMITS** the written statements of Witnesses TE and RGF;

<sup>6</sup> *Karemera et al.*, "Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision", 27 February 2009, para. 2.

<sup>7</sup> *Karemera et al.*, "Decision on Joseph Nzirorera's Second Motion for Finding of "No Case to Answer" and Motion for Reconsideration", 3 June 2008, para. 5; "Decision on Reconsideration of Protective Measures for Prosecution Witnesses", 30 October 2006, para. 2; *Prosecutor v. Augustin Nindiyimana, François-Xavier Nzuwonemeye, and Innocent Sagahutu* ("*Nindiyimana et al.*"), "Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials", 3 November 2004, para. 21.

<sup>8</sup> Response, para. 6.

<sup>9</sup> Motion, para. 4.

**DIRECTS** the Registry to give an exhibit number to each admitted statement in its full and redacted versions in order to protect the identity of the witnesses. Further directs the Registry to assign an exhibit number to the Personal Identification Sheet of each witness; and

**FINDS** the application relating to witness FRK moot.

Done in Arusha, this 19<sup>th</sup> day of November 2010 (Original in French)

[Signed]

Dennis C. M. Byron  
Presiding

[Signed]

Gberdao Gustave Kam  
Judge

[Signed]

Vagn Joensen  
Judge

[Seal of the Tribunal]

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