

ICTR-98-44-T 52551
16-12-2010
(52551-52547) 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: 16 December 2010

THE PROSECUTOR

v.

**Édouard KAREMERA and
Matthieu NGIRUMPATSE**

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVES
RECEIVED

210 DEC 16 P 12:21

**DECISION ON PROSECUTION'S ORAL MOTION FOR ADMISSION
OF JOSHUA RUZIBIZA'S SPEECH INTO EVIDENCE**

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

Office of the Prosecution:
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VJ

INTRODUCTION

1. On 11 November 2010, the Prosecution made an oral motion for the admission of a document, which it contends is the transcript of a speech given by Joshua (also known as Abdul) Ruzibiza on 21 March 2006 at Tromsø University ("Ruzibiza's Speech") that the Prosecution had used to test credibility during its cross-examination of Aloys Ruyenzi on 9 November 2010.¹ The Chamber found that the document could not be admitted at that stage, and the transcript was marked for identification as P ID-068.²
2. On 20 November 2010, the Prosecution presented a new copy of the speech from Jochen Peters ("Ruzibiza Speech Transcript from Peters"), a former University of Tromsø official who had attended the presentation and had received an electronic copy directly from Joshua Ruzibiza shortly thereafter.³
3. At the Status Conference on 25 November 2010, the Chamber heard oral submissions from the Prosecution on the admission of Ruzibiza's Speech.⁴ Leave was granted to both Accused to respond to the Prosecution's arguments in writing, and there were further submissions.⁵

DELIBERATIONS

Preliminary Matter

4. The Chamber notes that Édouard Karemera filed his responsive submission on 1 December 2010. Matthieu Ngirumpatse's Reply was first received by the Chamber when counsel for Ngirumpatse forwarded it to the Chamber, the Accused, and Chambers Management Section (CMS) on 6 December 2010. Both submissions were therefore filed outside of the time allotted for

¹ T. 11 November 2010, pp. 15-19.

² The transcript of the speech marked as P ID-068 was purportedly obtained from an internet site which reported on the speech on 24 March 2006, 3 days after it was given. T. 11 Nov 2010, p. 17. The speech is no longer available on the site, however, the news story remains at: <http://006728b.netsolhost.com/shared/RuzibizaNorwayCenterPeace03242006.html>.

³ Prosecution Email attachment:
2010-11-20-RUZIBIZA-Speech-Tramsø-Univ-received-20-Nov-2010-Jochen-Peters.pdf

⁴ T. 25 November 2010 (SC), p.1.

⁵ Requête aux fins de ne pas admettre comme preuve le prétendu discours d' Abdul Ruzibiza présenté à l'Université de Tromsø, filed on 1 December 2010 ("Karemera Motion"); Prosecutor's Reply to Édouard Karemera's Response – Prosecutor's Oral Motion to Admit Speech of Abdul Ruzibiza, filed on 6 December 2010; Mémoire en réponse de Matthieu Ngirumpatse sur la requête orale du procureur du 25 novembre 2010 aux fins d'admission d'une pièce a conviction, filed on 7 December 2010 ("Ngirumpatse Reply"); Mémoire en répliqué de Matthieu Ngirumpatse sur la Prosecutor's reply to Édouard Karemera's response - Prosecutor's oral motion to Admit Speech of Abdul Ruzibiza, filed on 7 December 2010; Prosecutor's Reply to Matthieu Ngirumpatse's Response – Prosecutor's Oral Motion to Admit Speech of Abdul Ruzibiza-, filed on 13 December 2010 ("Prosecution Reply to Ngirumpatse"); Sur répliqué de Matthieu Ngirumpatse a la requête orale du procureur du 25 novembre 2010 aux fins d'admission d'une pièce a conviction, filed on 14 December 2010 ("Ngirumpatse Sur-Reply").

responsive pleadings under Rule 72, which was reiterated to the Accused at the 25 November 2010 Status Conference.

5. Matthieu Ngirumpatse claims that his submission was sent via E-mail on 29 November 2010, and was only received later because of technical difficulties.⁶ Édouard Karemera offered no reasons for his late filing. It is not in dispute that Karemera's filing was submitted late. After reviewing the correspondence between counsel for Ngirumpatse and CMS, the Chamber considers that the submissions of both Accused were filed outside of the time allotted, and the Chamber may therefore rule on the motion based solely upon the Prosecution's oral submissions. In the interests of justice, however, the Chamber has considered the submissions of both Accused in rendering this decision.

Admission of Ruzibiza Speech

6. The admissibility of evidence, including documentary evidence, is governed by Rule 89 (C) which allows the Chamber to admit any relevant evidence it deems to have probative value.⁷ The Accused did not challenge its relevance, but objected to its admission on the ground that its authenticity was questionable and therefore had little probative value.

7. The document, a transcript of a speech made by Ruzibiza 10 days after he had testified in the *Bagosora* trial, was used to contradict aspects of the evidence in chief of Ngirumpatse witness Ruyenzi. Ruzibiza's opinions had become an important element in the trial. Pages from his book were admitted at Matthieu Ngirumpatse's request during cross-examination of Prosecution Witness ALG.⁸ Transcripts of his testimony in the *Bagosora* trial, along with the exhibits tendered during that testimony, including the entirety of his book, were admitted under Rule 92bis at the request of the now deceased former co-Accused Joseph Nzirorera.⁹ Ruzibiza's book was discussed at length by Édouard Karemera during Karemera's cross-examination by the Prosecution.¹⁰ Exhibit P-549, the transcript of a 10 July 2010 interview with Ruzibiza was recently admitted after it was used as an

⁶ Ngirumpatse Sur-Reply, paras. 2,3.

⁷ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse 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), 30 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.

⁸ T. 30 October 2006, pp. 57,59,60,63. Pages 192 and 192 of Ruzibiza's book were admitted as Exhibit No. DNG-35 and Pages 224 and 225 were admitted as Exhibit No. DNG-36.

⁹ *Karemera et al.*, Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Witness Testimony (TC), 15 July 2009, paras. 102, 103.

¹⁰ T. 28 May 2009, pp. 21-29.

annex in a motion in support of Ngirumpatse's motion to hear Aloys Ruyenzi as a live witness.¹¹ In light of the above the Chamber concludes that Ruzibiza's Speech of 21 March 2006 is relevant.

8. A factor in the assessment of the probative value of evidence is the requirement that it be *prima facie* credible; that is, it must have sufficient indicia of reliability.¹² While a Chamber always retains the competence under Rule 89 (D) to request verification of the authenticity of evidence obtained out of court, "to require absolute proof of a document's authenticity before it could be admitted would be to require a far more stringent test than the standard envisioned by Rule 89 (C)."¹³

9. Édouard Karemera argues that the Ruzibiza Speech Transcript from Peters varies significantly in both form and substance from P ID-068.¹⁴ After a thorough review of the documents, however, the Chamber finds that although the format varies slightly, the substance of the documents is practically identical and there is no negative impact on its assessment of the document's authenticity.¹⁵ Matthieu Ngirumpatse argues that the Ruzibiza Speech Transcript from Peters has not been signed and may have been altered.¹⁶ The Chamber believes that a signature is not necessary for a *prima facie* showing of authenticity. The Chamber also considers that the Ruzibiza speech transcript is not a contemporaneously generated document and Joshua Ruzibiza is not recognised by the Tribunal as an expert. However, in light of the reasoning discussed in above, this does not preclude it from admission.

Uy.

¹¹ T. 11 November 2010, p. 20.

¹² *The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delalić and Esad Landžo*, Case No. IT-96-21 ("Delalić et al."), Decision on Application of Defendant Zejnil Delalić for Leave to Appeal Against the Decision of the Trial Chamber of 19 January 1998 for the Admissibility of Evidence (AC), 4 March 1998 ("Delalić Decision on Admissibility"); *The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakaze and Anatole Nsengyumva*, Case No. ICTR-98-41-T ("Bagosora et al."), Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004, para. 8.

¹³ Delalić Decision on Admissibility, para. 20.

¹⁴ Karemera Motion, paras. 6,7,8.

¹⁵ The document received from Mr. Peters contains the following differences from P ID-068. First, two sentences at page 9, "Killings were never spontaneous as some Hutu try to say it. They were all well organized commune by commune but didn't begin the same day." do not appear in PID-068. Neither do the five document names on pages 2, 5, 9, and 11 which may have been PowerPoint cues, attachments or hyperlinks in an electronic document.

¹⁶ Ngirumpatse Reply, paras. 8, 10.

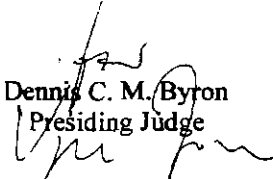
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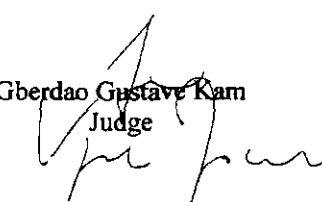
10. The Chamber notes that the Prosecution has produced an affidavit from Jochen Peters explicitly stating that he attended the speech by Joshua Ruzibiza and that the speech transcript was given to him by Ruzibiza after the speech, and attaching a copy of the speech¹⁷ and considers that the affidavit completes the chain of evidence establishing the authenticity of the speech transcript. The Chamber directs that the copy of the speech received from Mr. Peters, along with his affidavit of its authenticity (Annexure 3 to the Prosecution's 13 December 2010 Reply to Matthieu Ngirumpatse's Response –Prosecutor's Oral Motion to Admit Speech of Abdul Ruzibiza-) be admitted into evidence.

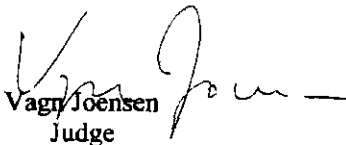
FOR THE ABOVE REASONS, THE CHAMBER

- I. DECLARES ADMISSIBLE** the Ruzibiza Speech Transcript from Jochen Peters; and
- II. REQUESTS** that the Registry assign an exhibit number to Ruzibiza's speech from Jochen Peters with Peters' affidavit attached, which together form Annexure 3 of the Prosecution's 13 December 2010 Reply to Matthieu Ngirumpatse's Response – Prosecutor's Oral Motion to Admit Speech of Abdul Ruzibiza-.

Arusha, 16 December 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



¹⁷ Annexure 3 to Prosecution Reply to Ngirumpatse