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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 Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date filed: 11 February 2011

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THE PROSECUTOR

v.

ÉDOUARD KAREMERA AND
MATTHIEU NGIRUMPATSE

DECISION ON THE FILING OF CERTIFIED WRITTEN STATEMENTS BY
MATTHIEU NGIRUMPATSE

Rule 92 (bis) of the Rules of Procedure and Evidence

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Defence Counsel for Matthieu Ngirumpatse:
Chantal Hounkpatin and Frédéric Weyl

CIII11-0029(E)

Translation certified by LSS, ICTR

INTRODUCTION

1. The Chamber admitted a number of written statements of Mathieu Ngirumpatse’s witnesses subject to their certification in accordance with Rule 92 (*bis*) of the Rules of Procedure and Evidence. The Chamber also ordered that a number of the authors of the statements should appear for cross-examination.¹

2. Mathieu Ngirumpatse filed the certified statements of 27 of his witnesses in view of their admission and indicated that he was dropping nine other written statements.²

DELIBERATIONS

Withdrawal of witnesses

3. Mathieu Ngirumpatse stated that he would not submit the written statements of Witnesses BGJ, V09 and 403 and those of Witnesses CHI, WEJ, 522, FRZ, MBA and HBW who were to appear for cross-examination.³ The Chamber grants Mathieu Ngirumpatse leave to vary his list of witnesses and to exclude those nine witnesses from his list.

Filing of the certified written statements of Witnesses LIB, LLU, BR5, SPI, VG, BRF, Z2, BFP, SDA, BR7, LAT, ZRT, EFT, AHL, AHK, CAH, DJ, 407, 409, PBQ⁴, ZBN, ZNW, AHM and FRK

4. After having examined the written statements and their attached certifications, the Chamber admits the written statements, the identification sheets and the certification documents of the following witnesses: LIB, LLU, BR5, SPI, VG, BRF, Z2, BFP, SDA, BR7, LAT, ZRT, EFT, AHL, AHK, CAH, DJ, 407, 409, PBQ, ZBN, ZNW, AHM and FRK.

Filing of the written statement of Witness XYZ

5. With regard to Witness XYZ’s statement, the Chamber notes that the Witness explained during certification that his evidence related to events that took place prior to 6 April 1994, thus

¹ See *The Prosecutor v. Édouard Karemera and Mathieu Ngirumpatse*, Case No. ICTR-98-44-T (“*Karemera et al.*”), “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 on *Requête de Mathieu Ngirumpatse visant à l’admission de déclarations sur le fondement de l’article 92 bis du Règlement*”, 1 September 2010; *Ordonnance portant calendrier*, 30 September 2010; “Decision on Mathieu Ngirumpatse’s Motions relating to his Witnesses and the Admission of Written Statements”, 27 October 2010; *Décision Relative à la requête de Mathieu Ngirumpatse aux fins de modification de sa liste de témoins et en reconsidération*, 28 December 2010.

² “*Requête de Mathieu Ngirumpatse suite à la certification de déclarations écrites conformément aux décisions des 1^{er} septembre et 27 octobre 2010*” and its Confidential Annex, dated 30 January 2011 and filed on 31 January 2011 (“*Motion*”).

³ *Motion*, para. 8.

⁴ The Chamber notes that in its Decisions of 1 September and 27 October 2010, it referred to this Witness by the pseudonym PQB.

putting the evidence in a circumscribed context. Consequently, the Chamber admits the Witness’ identification sheet, the written statement together with the above information, and the certification documents.

Filing of the written statement of Witness 400

6. The Chamber recalls that it admitted the written statement of Witness 400 subject to the deletion of the first four paragraphs on the second page of the statement.⁵ The Chamber however notes that Matthieu Ngirumpatse filed an unredacted statement. Consequently, the Chamber holds that the written statement of Witness 400 should be redacted in accordance with the Decision of 1 September 2010, in order for it to be admitted.

Filing of the written statement of Witness ZBA

7. The Chamber recalls that on 1 September 2010, it admitted the written statement of Witness ZBA subject to the Witness appearing for cross-examination and his statement being certified.⁶ On 29 October 2010, the Chamber dismissed Matthieu Ngirumpatse’s request to reconsider its Decision for the Witness to appear for cross-examination.⁷ On 9 November 2010, the Prosecution indicated that it would waive its right to cross-examine Witness ZBA.⁸

8. The Chamber has the inherent power to reconsider its own decisions, but may do so only in exceptional circumstances.⁹ Thus, a Chamber may reconsider one of its decisions when a new fact is discovered that was not known to the Chamber at the time it made its original decision, and when there is reason to believe that the original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby warranting the exceptional remedy of reconsideration.¹⁰

9. The Chamber, while taking note of the Prosecution’s waiver of its right to cross-examine the Witness and of the fact that Witness ZBA’s statement has been certified, finds that these factors warrant reconsideration of its Decision. Witness ZBA’s statement is therefore admitted.

⁵ *Karemera et al.*, “Decision on *Requête de Matthieu Ngirumpatse visant à l’admission de déclarations sur le fondement de l’article 92 bis du Règlement*”, 1 September 2010, para. 39.

⁶ *Ibid.*, para. 57.

⁷ *Karemera et al.*, “Decision on *Requête urgente de Matthieu Ngirumpatse aux fins d’audition de témoins*,” 29 October 2010, paras. 12 and 13.

⁸ T. 9 November 2010.

⁹ *Karemera et al.*, “Decision on Joseph Nzirorera’s Motion for Reconsideration of 2 December 2008 Decision”, 27 February 2009, para. 2.

¹⁰ *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; *The Prosecutor v. Augustin Ndingiyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye and Innocent Sagahutu (“Ndingiyimana 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.

Written Statements of Witnesses BAB, FO, YLH and AHO

10. The Chamber takes note that the certified written statements of Witnesses BAB, FO, YLH and AHO will be filed shortly by Mathieu Ngirumpatse.

FOR THE FOREGOING REASONS, THE CHAMBER

- I. GRANTS** Mathieu Ngirumpatse leave to vary his list of witnesses and to exclude Witnesses BGJ, V09, 403, CHI, WEJ, 522, FRZ, MBA and HBW.
- II. ADMITS** the certified written statements of Witnesses LIB, LLU, BR5, SPI, VG, BRF, Z2, BFP, SDA, BR7, LAT, ZRT, EFT, AHL, AHK, CAH, DJ, 407, 409, PBQ, ZBN, ZNW, AHM, XYZ, ZBA and FRK.
- III. ADMITS** the written statement of Witness 400 on condition that paragraphs 1 to 4 on the second page are redacted.
- IV. REQUESTS** the Registry to give exhibit numbers to both the full and redacted versions of each of the written statements admitted, in order to protect the identity of the authors. The Registry should also give an exhibit number to the identification sheet of the author of each statement.

Arusha, 11 February 2011, done in French

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Gberdao Gustave Kam
Judge

[Signed]

Vagn Joensen
Judge

