



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
7-3-2011
(52687-52685)

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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: 7 March 2011

JUDICIAL RECORDS ARCHIVE
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J. K. K. K.

THE PROSECUTOR

v.

**Édouard KAREMERA and
Matthieu NGIRUMPATSE**

Case No. ICTR-98-44-T

RECONSIDERATION OF THE MODALITIES OF WITNESS BU'S TESTIMONY

Office of the Prosecution:
Don Webster
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Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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1. On 27 October 2010, the Chamber ordered that Witness BU testify by video-link.¹ On 5 January 2011, the Chamber ordered that Witness BU testify by video-link from his State of residence, denying Matthieu Ngirumpatse's request that BU testify by video-link from a neighboring country because it was not established that the witness could cross the border without being arrested.² Faced with the reluctance of BU's State of residence to cooperate with the Tribunal for the organisation of his testimony, the matter was reported to the Security Council pursuant to Rule 7 *bis* (A) of the Rules of Procedure and Evidence by the Vice-President³ of the Tribunal following receipt of a letter from the Trial Chamber.⁴

2. The Parties have indicated that they have agreed on a different way for the Chamber to hear the witness and that Matthieu Ngirumpatse will seek the admission of BU's evidence pursuant to Rule 92 *bis*. The Chamber considers this indication to be a request for reconsideration of the Impugned Decision. The standard for reconsideration has been well-established by this Tribunal: a Chamber has the inherent power to reconsider its decisions when: (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in injustice thereby warranting the exceptional remedy of reconsideration.⁵

3. The Chamber considers that the agreement between the Parties regarding BU's testimony constitutes a new fact and change of circumstances warranting the reconsideration of the Impugned Decision. Therefore, the Chamber considers that it is in the interests of justice to vary the conditions of the testimony of Witness BU, and revokes its order for the hearing of BU's testimony by video-

¹ *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, case No. ICTR-98-44-T ("Karemera *et al.*"), Décision relative aux requêtes de Matthieu Ngirumpatse concernant ses témoins et l'admission de déclarations écrites, 27 October 2010.

² *Karemera et al.*, Décision sur la requête de Matthieu Ngirumpatse relative à REA et BU, 5 January 2011 ("Impugned Decision").

³ In view of Rule 7 *bis* (A), where a Trial Chamber or a Judge is satisfied that a State has failed to comply with an obligation under Article 28 of the Statute relating to any proceedings before that Chamber, the Chamber may request the President to report the matter to the Security Council. As the President of the Tribunal is also a judge in the present case, the Chamber decided to request the Vice-President to make such a report.

⁴ Letter from the Trial Chamber to Vice-President Khan re: Non compliance of a State with obligations pursuant to Article 28 of the Statute and Rule 7 *bis* (A) of the Rules of Procedure and Evidence.

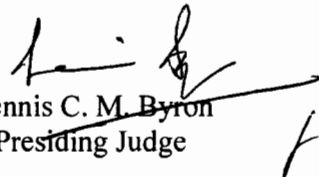
⁵ *Karemera et al.*, Decision on Reconsideration of Protective Measures for Prosecution Witnesses, 30 October 2006, para. 2.

link. Consequently, the Chamber also revokes its request to the Vice-President to report the non-compliance of Witness BU's State of residence to the Security Council.

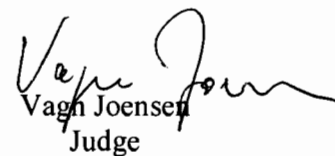
FOR THESE REASONS, THE CHAMBER

- I. RECONSIDERS** its decision to hear Witness BU by video-link;
- II. REVOKES** its order to Witness BU's State of residence for cooperation in the organisation of the testimony of the witness; and
- III. REVOKES** its request to the Vice-President to report the non-compliance of Witness BU's State of residence to the Security Council.

Arusha, 7 March 2011, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]