

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 3 March 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JOSEPH NZIRORERA'S MOTION TO
RECALL WITNESS BTH

The Office of the Prosecutor:

Mr. Don Webster
Ms. Allayne Frankson-Wallace
Mr. Iain Morley
Ms. Gerda Visser
Mr. Saidou N'Dow

Defence Counsel:

Mr. Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. Joseph Nzirorera respectfully moves the Trial Chamber for an order to recall Witness BTH on the grounds that he has now disavowed the evidence he gave in this case and has acknowledged that he fabricated his testimony against Mr. Nzirorera.

2. Witness BTH testified as a prosecution witness in June 2006. On 8 February 2008, during an interview with the prosecution and the defence in the *Bizimungu et al* case, Witness BTH advised that he had lied in his testimony against Mr. Nzirorera at the behest of Rwandan authorities. A copy of three CD Rom videos was disclosed by the prosecution to Mr. Nzirorera on 25 February 2008 and received by his counsel on 29 February 2008. The disclosure bears Registry No. 34079 and is hereby incorporated in this motion by reference.

3. Witness BTH explained that Rwandan authorities had recruited him and other prisoners in Ruhengeri prison and solidarity camps to give false evidence against authorities detained in Arusha, had told them what to say and how to say it, and promised them that they would be released if they did so. He also explained that he had gotten together with other prosecution witnesses, including Witness GBU, and fabricated stories in such a way that they could corroborate each other when testifying in Arusha.¹

4. Witness BTH apologized for his false testimony and indicated he was ready to testify again at the ICTR and correct the false testimony.²

5. Witness BTH said that he had lied about meetings held at Nzirorera's mother's house and had lied about Nzirorera giving money to the Interahamwe.³ He never saw any authorities at Nzirorera's mother's house on the morning of 7 April, contrary to his trial

¹ CD#1 at 41:00—54:00

² CD#1 at 35:40 et seq; CD#2 at 1:10:00 et seq.

³ CD#2 at 22:00 et seq

testimony.⁴ He also lied about Nzirorera calling on the phone and telling the Interahamwe to kill his own son.⁵

6. Witness BTH further said that contrary to his testimony in Nzirorera's case, he had never been a member of the Amahindure, had never undergone military training, and had never received a firearm or Interahamwe membership card.⁶

7. Witness BTH said that he had also lied when he claimed to have attended a meeting in Mukingo commune in April 1994 at which the prefet was introduced to the population and at which he claimed Mr. Nzirorera said that the population should seek out and kill all RPF accomplices.⁷

8. Witness BTH also said that he had lied when he accused counsel for Mr. Nzirorera of offering him money to get him to change his testimony.⁸

9. Trial Chambers have the power to recall witnesses upon a showing of good cause. Assessing good cause to recall a witness involves an analysis of (1) the purpose for which the witness will testify; and (2) the reasons why the witness was not questioned on those matters earlier.⁹

10. In the *Rukundo* case, the Trial Chamber held that the interests of justice required that a prosecution witness be recalled where he had written a letter recanting his testimony.¹⁰ Other Trial Chambers have likewise granted motions to recall witnesses

⁴ CD#2 at 39:00 et seq

⁵ CD#2 @ 1:08:00 et seq.

⁶ CD #2 at 29:00 et seq.

⁷ CD#1 at 38:00 et seq.

⁸ CD#3 at 5:00 et seq.

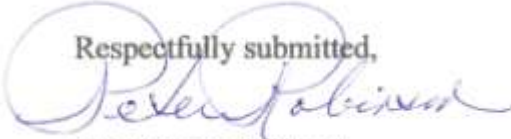
⁹ *Prosecutor v Bagosora et al*, No. ICTR-98-41-T, *Decision on Nsengiyumva Motions to Call Doctors and to Recall Eight Witnesses* (19 April 2007) at para. 20; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Joseph Nzirorera's Motion to Recall Ahmed Mbonyunkiza* (25 September 2007) at para. 5

¹⁰ *Prosecutor v Rukundo*, No. ICTR-2001-70-T, *Decision on Defence Motion to Recall Prosecution Witness BLP* (30 April 2007)

where they have subsequently made statements or given testimony that is inconsistent with their trial testimony.¹¹

11. There is a compelling reason to recall Witness BTH in this case. He has admitted in a recorded meeting between the prosecution and the defence to fabricating his testimony against Mr. Nzirorera. To allow his testimony to stand under these circumstances would be unconscionable.

12. Therefore, it is respectfully requested that Witness BTH be recalled at the earliest opportunity.

Respectfully submitted,

PETER ROBINSON
Lead Counsel for Joseph Nzirorera

¹¹ *Prosecutor v Niyiramasuhuko et al*, No. ICTR-98-42-T, *Decision on Ntahobali's Strictly Confidential Motion to Recall Witnesses TN, QBQ, and QY for Additional Cross-Examination* (3 March 2006) at para. 46-47; *Prosecutor v Kajelijeli*, No. ICTR-98-44A-T, *Decision on Juvenal Kajelijeli's Motion Requesting the Recalling of Prosecution Witness GAO* (2 November 2001) at para. 13; *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Fidele Uwizeye for Further Cross Examination* (9 October 2007) at para. 6