

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

CASE NO.: ICTR-98-44-T
CHAMBER III

THE PROSECUTOR
OF THE TRIBUNAL
v.
ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

TUESDAY, 8 JUNE 2010
0946H
CONTINUED TRIAL

Before the Judges:

C.M. Dennis Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

For the Registry:

Mr. Nouhou Diallo
Mr. Issa Mjui

For the Prosecution:

Mr. Don Webster
Ms. Maria Wilson
Mr. Takeh Sendze

For the Accused Édouard Karemera:

Ms. Dior Diagne-Mbaye

For the Accused Mathieu Ngirumpatse:

Mr. Frédéric Weyl

For the Accused Joseph Nzirorera:

Mr. Peter Robinson

Court Reporter:

Ms. Tanya West

PROCEEDINGS

1

2 MR. PRESIDENT:

3 Good morning, everybody.

4

5 Mr. Registrar, could you open the proceedings, please.

6 MR. DIALLO:

7 Thank you, Mr. President.

8

9 Trial Chamber III of the International Criminal Tribunal for Rwanda, composed of Judge Dennis Byron,
10 presiding, Gberdao Gustave Kam and Vagn Joensen, is now sitting this Tuesday, 8th June 2010 in
11 open session for the continuation of proceedings in the matter of the Prosecutor versus Karemera et al.,
12 Case No. ICTR-98-4-T (*sic*). I thank you.

13 MR. PRESIDENT:

14 Thank you, Mr. Registrar.

15

16 The appearances are the same.

17

18 Yes, Mr. Robinson.

19 MR. ROBINSON:

20 Yes. Good morning, Mr. President. Good morning, Members of the Trial Chamber. Just to give you an
21 update on a few items, first of all, I met yesterday with both witnesses who are here in Arusha, and
22 each of them confirmed to me that they are willing to come back and give their testimony at another
23 time.

24

25 Secondly, I yesterday after -- after the proceedings I went to the registrar's office to try to have an
26 appointment with him. He had left for the day, and he was not available. I went again this morning, and
27 I was told that he has appointments out of the office during the day today, but they are promising to call
28 me when he's free.

29

30 So the matter is *sub judice* before the registrar, my application to withdraw pursuant to Article 19 of the
31 Directive on the Assignment of Defence Counsel. And I intend to respect the results of that process,
32 and I would ask that you do the same. Thank you.

33 MR. PRESIDENT:

34 Mr. Robinson, yesterday you spoke about courtesy. Why do you think that you need to tell me that I
35 should respect the process -- the judicial process -- quasi-judicial process?

36 MR. ROBINSON:

37 Mr. President, I don't think I need to tell you that. I ask you to respect that process, and that means not

1 to proceed until that process has run its course.

2 MR. PRESIDENT:

3 That's a different issue. We already ruled yesterday that that was not a ground for adjourning these
4 proceedings. We do not reconsider that ruling.

5 MR. ROBINSON:

6 Okay. Very well.

7 MR. PRESIDENT:

8 Could you please call the next witness.

9 *(Witness entered courtroom)*

10 MR. PRESIDENT:

11 Good morning, Mr. Witness.

12 THE WITNESS:

13 Good morning.

14 MR. PRESIDENT:

15 You are multilingual. You -- you replied to me in English.

16 THE WITNESS:

17 Yes. I can speak English too.

18 MR. PRESIDENT:

19 Okay. Yesterday you -- you took your oath to give testimony, and counsel made a statement which I
20 understand that he has withdrawn. So we are now going to give you an opportunity to give your
21 testimony. And he will now commence his interrogation of you.

22 MR. ROBINSON:

23 Thank you, Mr. President.

24

25 Mr. Busogi, good morning. Welcome back. Mr. Busogi, yesterday, as I told you, it was the position of
26 the Defence that, given the circumstances of the arrest of one of our colleagues, Peter Erlinder, in
27 Rwanda, that Mr. Nzirorera could not receive a fair trial here if his counsel was not free to represent his
28 interests to the fullest extent possible. And that situation unfortunately hasn't changed overnight.

29

30 And so my question to you is whether or not you would be willing to return to this Tribunal to give your
31 testimony at a later time, once the proceedings have reached a stage at which I'm able to adequately
32 represent Mr. Nzirorera.

33 MR. PRESIDENT:

34 Now, before you answer the question, Mr. Busogi, I would like you to know the position of the
35 Trial Chamber. What Mr. Robinson has just said is inconsistent with the ruling that we made yesterday.
36 We are satisfied that Mr. Robinson is in a position to discharge his duties as a lawyer in this trial, and
37 even if he has a witness, without interference from any outside source. So we have already ruled that

1 he is in a position to represent his client properly now.

2

3 I'm mentioning this so that you could understand the framework of what -- that question that's been put
4 to you, because we would like to consider whether there is an attempt now to obstruct the progress of
5 this trial.

6

7 We understood that you were called to testify because your testimony was important to Mr. Nzirorera's
8 defence. And if Mr. Robinson refuses to question you because he disagrees with an order of the Court,
9 that would be an obstruction of justice, as far as I understand it. So that's the framework in which the
10 question has been put to you. I think I should make the record clear now.

11 THE WITNESS:

12 I would agree to return to testify if I am needed in this Court at a later time, in answer to Mr. Robinson's
13 question. But I am in your hands as to whether or not we should continue with these proceedings,
14 Mr. President. Thank you.

15 MR. ROBINSON:

16 Thank you, Mr. President. I have no further questions.

17 MR. PRESIDENT:

18 Mr. Robinson, we consider that this step is obstructing the justice of this -- our -- our trial and in direct
19 disobedience of a court order. At this moment we have decided that what we will do is give you a
20 warning under Rule 46 and direct the registrar that this be communicated to your Bar association. We
21 adjourn until 2 o'clock when we expect you to examine this witness. We adjourn.

22 *(Court recessed from 0955H to 1417H)*

23 MR. PRESIDENT:

24 Good afternoon, everybody.

25

26 Mr. Registrar, could you bring the witness in, please.

27 *(Witness entered courtroom)*

28 MR. PRESIDENT:

29 Good afternoon, Mr. Witness.

30 THE WITNESS:

31 Good afternoon.

32 MR. PRESIDENT:

33 Well, we -- we -- we'll make another effort to hear your testimony. And I now direct Mr. Robinson to
34 conduct his examination of you on behalf of Joseph Nzirorera.

35 MR. ROBINSON:

36 Thank you, Mr. President. Good afternoon.

37

1 Good afternoon, Mr. Busogi.

2
3 Mr. President, before proceeding, I would just like to give you, first of all, an update that I, once again,
4 went to the office of the registrar this afternoon before 2 o'clock and was told that he's not available
5 today, has appointments outside the office, and he's unable to meet with me today concerning my
6 motion to withdraw from these proceedings.

7
8 I want to tell you that it's not my intention to obstruct these proceedings. As I represented to the
9 registrar in my motion to withdraw, the application of the Rwandan negation of genocide statute and
10 national security statute in the case against my colleague, Peter Erlinder, for his work at the ICTR has
11 made it impossible for me to represent Mr. Nzirorera under these conditions.

12
13 And to continue to do so would put me in violation of Article 5 of the Code of Professional Conduct for
14 Defence Counsel, which says that "In providing representation to a client, counsel must never permit
15 their independence, integrity, and standards to be compromised by external pressures."

16
17 It would also put me in violation of Article 9 of that same professional code of conduct, which says that
18 "...Counsel must not represent a client with respect to a matter if the counsel's professional judgement
19 on behalf of the client will be or may reasonably be expected to be adversely affected by the counsel's
20 own financial, business, property, or personal interests."

21
22 And so I'm not unilaterally withdrawing my assignment, but I've applied to the registrar who assigned
23 me to withdraw the assignment for these professional and personal reasons.

24
25 I want to let you know that I'm prepared to fully respect the outcome of those procedures under
26 Article 19 of the Directive on the Assignment of Defence Counsel. And if the final decision is that I'm
27 not allowed to withdraw, I'll be prepared to proceed.

28
29 I know that you would like me to proceed now, and I would like to accommodate you. But to do so
30 would violate the code of professional conduct, in my opinion.

31
32 Now, this morning you gave me a warning and reported me to my Bar association. And given the
33 stakes involved, I would like to be sure whether what I'm doing is correct. Because I think it is, but I
34 would like to check. So I would ask you now to give me the opportunity to retain and consult counsel
35 before proceeding and also to obtain an opinion from the California Bar. And then in that case I will be
36 sure that what I'm doing is correct. Thank you, Mr. President.

1 MR. PRESIDENT:

2 Mr. Robinson, it's quite clear that you are not obeying our directives. And I think the Chamber does
3 have a reason to believe that you may be in contempt of the Tribunal under Rule 77 for directly
4 disobeying a court order and refusing to conduct the examination of Witness Janvier Busogi, who has
5 travelled from the United States to testify in Arusha after the Tribunal overcame many expensive
6 logistical and administrative obstacles. Mr. Busogi is an important witness for the defence of
7 Joseph Nzirorera, and the Chamber notes that your failure to conduct his examination has created a
8 direct and negative impact on Nzirorera's ability to present an effective defence.

9

10 Therefore, under Rule 77(C)(iii), the Chamber will initiate contempt proceedings against you.

11

12 Accordingly, the Chamber orders that Mr. Robinson procure legal representation and submit an affidavit
13 showing cause why he should not be held in contempt of court no later than close of business on
14 Friday 18th June. The affidavit should also mention why Mr. Nimy has not been present in court this
15 week, which has effectively left Mr. Nzirorera without counsel as this matter unfolds.

16

17 The Chamber further orders that Mr. Robinson and Mr. Nimy appear in court on Monday 21st June.

18

19 The Chamber recalls that, under Rule 77(G), "The maximum penalty that may be imposed on a person
20 found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding five years or a
21 fine not exceeding \$10,000 or both."

22

23 Moreover, under Rule 77(L) (*sic*), "If a counsel is found guilty of contempt of the Tribunal...the Chamber
24 making such finding may also determine that counsel is no longer eligible to represent a suspect or
25 accused before the Tribunal..."

26

27 We now adjourn the trial until Monday 21st June.

28 MR. WEYL:

29 Mr. President.

30 *(Court adjourned at 1425H)*

31 *(Pages 1 to 5 by Tanya West)*

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CERTIFICATE

I, Tanya West, Official Court Reporter for the International Criminal Tribunal for Rwanda, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*stenotype*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in nowise interested in the result of said cause.

_____ Tanya West