

ICTR-98-44-T
26-01-2010
(49372-49366)

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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: 26 January 2010

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
RECEIVED

1 2010 JAN 26 1 A 8: 43

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JOSEPH NZIRORERA'S MOTION TO ADMIT STATEMENT
OF GRATIEN KABILIGI

The Office of the Prosecutor:

Mr. Don Webster
Mr. Saidou N'Dow
Mr. Takeh Sendze

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, pursuant to Rule 92 *bis*, to admit the statement of Gratién Kabiligi, attached as Annex A, as evidence in this case.
2. Paragraph 32.3 of the Indictment alleges that Joseph Nzirorera attended a security council meeting at the Kigali prefecture office on 30 April 1994 and publicly thanked the Interahamwe for their good work.
3. Prosecution Witness UB has testified that among the people present at this meeting was General Gratién Kabiligi.¹
4. On 25 January 2010, General Kabiligi provided a signed statement which indicates that he never attended or heard of this meeting.
5. The Trial Chamber has previously required Mr. Nzirorera to bring all of his Rule 92 *bis* applications in a single motion filed on 8 December 2008 unless good cause was shown.²
6. Good cause exists for the consideration of admission of General Kabiligi's statement.
7. At the time of the filing of the Omnibus Rule 92 *bis* motion, General Kabiligi had agreed to testify as a live witness for Mr. Nzirorera,
8. However, after General Kabiligi's acquittal, he has been unable to find a country to be resettled in, and he has been advised by his lawyer not to testify for an accused person so as to jeopardize his ability, and the ability of the Registrar, to find a country which will accept him. On 22 January 2010, General Kabiligi advised Mr. Nzirorera's

¹ Transcript of 7 March 2006 @ 64; Exhibit DNZ-86

² Order to Joseph Nzirorera to Reduce His Witness List (24 October 2008) at para. 11

Lead Counsel that he would not testify. This was confirmed by an e-mail from his lawyer on 25 January 2010.³

9. This Trial Chamber has already admitted under Rule 92 *bis* similar statements from other persons who were said to have attended the same meeting, who also affirmed that they neither attended nor heard of such a meeting.⁴

10. Therefore, it is respectfully requested that the statement of General Kabiligi be admitted pursuant to Rule 92 *bis* to contradict the testimony of Prosecution Witness UB. General Kabiligi is in Arusha and can appear before the Registry at any time to complete the certification procedure if this motion is granted.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

³ The e-mail is attached as Annex B to this motion.

⁴ *Decision on Joseph Nzirorera's Motion to Admit Statements of Aloys Simpunga and Gerard Kayumba and of Reconsideration of Decision on Admission of Written Statements and Witness Testimony* (20 October 2009) at paras. 10,13

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ANNEX A

Statement of Gratien Kabiligi

I, Gratien Kabiligi, hereby declare under penalty of perjury that the following is true and correct:

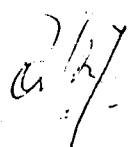
1. I was the head of the G-3 bureau on the General Staff of the Rwandan Army from September 1993 to July 1994.

2. I have been acquitted at this Tribunal in December 2008.

3. I have been advised that at the trial of Joseph Nzirorera, Prosecution Witness UB has testified that I was present at a meeting at the Kigali prefecture office in late April 1994 at which Joseph Nzirorera attended and at which the prefet of Kigali, conseillers, and Interahamwe were present.¹

4. I never attended or heard of such a meeting.

Dated: 25 Janvier 2010



Gratien KABILIGI

¹ Transcript of 7 March 2006 @ 64; Exhibit DNZ-86

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ANNEX B

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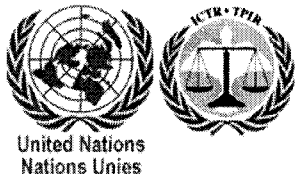
Hi Peter:

Kabiligi informed me he will not testify.

However he is prepared to sign the 92bis statement you sent to me as is.

Regards

Paul Skolnik



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSO P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> F. A. Talon (Appeals/Team IV)
From:	<input type="checkbox"/> Chamber (names)		<input checked="" type="checkbox"/> Defence Peter Robinson (names)
	<input type="checkbox"/> Prosecutor's Office (names)		<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Karemera et al		Case Number: ICTR-98-44-T
Dates:	Transmitted: 26 January 2010		Document's date: 26 January 2010
No. of Pages:	7	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	JOSEPH NZIRORERA'S MOTION TO ADMIT STATEMENT OF GRATIEN KABILIGI		
Classification Level:		TRIM Document Type:	
<input type="checkbox"/> Ex Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence <input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Judgement <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities	

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

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III - TRANSLATION PRIORITISATION (For Official use ONLY)

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: