

ICTR-98-44-T
15-12-2009
(48957-48946)

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MM

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: 15 December 2009

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
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JOSEPH NZIRORERA'S FINAL PRE-DEFENCE BRIEF
VOLUME 2: KIBUYE EVENTS

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

TABLE OF CONTENTS

I.	Introduction	03
II.	The June 1993 MRND Rally	03
II.	Conclusion	12

I.

INTRODUCTION

1. Joseph Nzirorera is not charged in the indictment with involvement in any of the events which occurred in Kibuye, including the meetings held on 3 May 1994 and 16 May 1994 and the events in Bisesero. Therefore, his defence case will not deal specifically with those events.

2. However, the prosecution was allowed to lead evidence of the uncharged conduct in which it was claimed that Mr. Nzirorera attended an MRND rally at Gatwaro stadium in Kibuye in June 1993 and spoke at this gathering.

3. This allegation, based upon the uncorroborated allegation of Witness BDW, is a flagrant lie. It was concocted while Witness BDW was an inmate in Ruhengeri prison, and he sought to support it with fabricated letters to Rwandan authorities. Mr. Nzirorera never attended, or even heard of such a meeting being held.

4. During the trial session beginning on 18 January 2010, Mr. Nzirorera will present his evidence refuting this uncharged allegation.¹ Because there are no outstanding issues on the Kibuye events, Mr. Nzirorera is now able to file his final pre-defence brief to serve as a guide to the Trial Chamber and the parties when he presents his Kibuye evidence.

II.

THE JUNE 1993 MRND RALLY

a. Prosecution evidence

5. Witness BDW testified that sometime in June 1993, he attended an MRND rally at Gatwaro stadium in Kibuye.² Witness BDW testified that he traveled to the meeting in the commune vehicle along with Bourgmestre Kabasha, and conseillers Speciose Nyiramirimo, Silas Sebashi, Nkurikiyirika, and Mugabonake.³ There were other bourgmestres in attendance at the meeting, including Augustin Karara of Gitesi,

¹ Expert Witness Kim Hughes will testify on 1 February 2010 and Witness 57 will testify sometime shortly thereafter.

² Transcript of 14 November 2007 @ 44

³ Transcript of 8 April 2008 @ 41-42

Muragizi of Mwendo commune, Sikubwabo of Gishyita commune, and Benimana of Ritsira commune.⁴

6. Witness BDW testified that the master of ceremonies was Aloys Munyakazi, President of MRND for Gitesi commune.⁵ The first to speak was Prefet Clement Kayishema of Kibuye prefecture. He introduced the authorities who had come from Kigali, including Edouard Karemera, Joseph Nzirorera, and two members of Parliament, Cyprien Munyampundu and Donatille Niyitegeka.⁶ According to Witness BDW, there were between 6-900 people at the stadium.

7. According to Witness BDW, Karemera made a speech in which he said the Tutsi were the enemy and that the Interahamwe had to be trained militarily.⁷

8. Witness BDW claimed that Mr. Nzirorera was introduced as Minister of Public Works.⁸ In fact he had not been Minister of Public Works since 1990.

9. Witness BDW first testified that Nzirorera had closed the meeting, saying that the Interahamwe in his region in Mukingo were capable of confronting the Tutsi whereas the people in Kibuye were lagging behind.⁹ According to him, Nzirorera castigated the wickedness of the Tutsi, and said the enemy which had attacked the country was none other than the Tutsi. He used the term "Tutsi" explicitly.¹⁰ Nzirorera also said that in his native commune Interahamwe had already started training and young people there could even go and help soldiers at the warfront. He criticized the people in Kibuye because they had not yet organized the Interahamwe in the prefecture.¹¹

10. However, on cross examination, Witness BDW denied that Nzirorera had closed the meeting. He said the Prefet closed the meeting.¹² He also claimed that Nzirorera was Chairman of the MRND.¹³ Witness BDW later denied that he had said

⁴ Transcript of 8 April 2008 @ 42

⁵ Transcript of 8 April 2008 @ 43

⁶ Transcript of 14 November 2007 @47

⁷ Transcript of 14 November 2007 @ 44

⁸ Transcript of 8 April 2008 @ 45

⁹ Transcript of 14 November 2007 @ 47-48

¹⁰ Transcript of 8 April 2008 @ 48-49

¹¹ Transcript of 8 April 2008 @ 49

¹² Transcript of 29 November 2007 @ 17

¹³ Transcript of 29 November 2007 @ 17

that Nzirorera was Chairman of the MRND party, claiming it was an error or translation or interpretation.¹⁴

11. In a document dated 2 April 2003, less than two months after he arrived in Ruhengeri prison, Witness BDW wrote a letter to the prosecutor in which he offered to help Rwandan justice and the ICTR. He accused Karemera in this document. However, when describing the meeting of 25 June 1993 at Kibuye stadium, he made no mention of Joseph Nzirorera.¹⁵

12. The credibility of Witness BDW must be considered very low.

13. He is serving a life sentence for genocide.¹⁶

14. Witness BDW has lied to the authorities in the past. When questioned about his crimes by a Rwandan prosecutor on 25 April 2000 he provided false information and signed a statement which was untrue.¹⁷ He also lied when taken before the council of judges on one occasion in Kibuye.¹⁸

15. On 13 March 2001, the prosecutor filed charges against Witness BDW in Kibuye based upon statements of six witnesses who accused him of participating in murders in his area. Witness BDW claimed that all of those people were lying.¹⁹

16. In a letter dated 23 October 2002, Witness BDW denied involvement in murders and admitted only involvement in looting livestock.²⁰

17. Witness BDW claimed to have confessed to being an accomplice to murders before his trial.²¹ However, in the trial judgement, the judges found him guilty of ordering killings. The judges said that "During the proceedings, [Witness BDW] pleaded guilty to looting and reaping in other people's fields and asked forgiveness for that, nevertheless, such a plea is meaningless since he pleaded guilty to looting only while it has been established that he is, rather, a murderer and a torturer who killed individuals dreadfully by burning them inside their house."²²

¹⁴ Transcript of 8 April 2008 @ 46

¹⁵ Transcript of 8 April 2008 @ 33; Exhibit #DNZ-441

¹⁶ Transcript of 28 November 2007 @ 5

¹⁷ Transcript of 8 April 2008 @ 9; Exhibit #DNZ-436

¹⁸ Transcript of 29 November 2007 @ 29

¹⁹ Transcript of 8 April 2008 @ 11; Exhibit # DNZ-437

²⁰ Transcript of 8 April 2008 @ 17; Exhibit #DNZ-438

²¹ Transcript of 8 April 2008 @ 22

²² Transcript of 8 April 2008 @ 22-23; Exhibit# DNZ-439

18. Witness BDW arrived at Ruhengeri prison in February 2003 and remained there until July 2007.²³ The Trial Chamber has heard evidence from numerous witnesses concerning the fabrication of testimony against authorities in Arusha which occurred at Ruhengeri prison.²⁴

19. Moreover, Witness BDW produced false documents to this Trial Chamber in order to substantiate his testimony.

20. In order to prove that he had mentioned Karemera before going to Ruhengeri prison, Witness BDW produced a three page handwritten document dated 20 December 2002 and bearing the stamp of the Kibuye prison on the first page.²⁵ He asserted that “this entirely demolishes your case according to which I came to an agreement with co-detainees in Ruhengeri prison.”²⁶

21. Witness BDW testified that those same three pages were handed to the director of the Kibuye prison.²⁷ He testified that he was the one who drafted the document.²⁸ It was for use by the gacaca courts in his area.²⁹ All three pages were written on the same day.³⁰

22. The subject heading on the document is: “Testimony regarding the events of April 1994 relating to the genocide and massacres which occurred as from 1993.” However, the content of the first page deals only with events from 1994, while the content of the second and third pages deal with 1993 and May 1994 events. Witness BDW denied adding the phrase “which occurred as from 1993” so as to make it appear that the second and third page had been attached to the document.³¹

23. Witness BDW acknowledged that Karemera’s name did not appear on the first page of the document.³²

²³ Transcript of 8 April 2008 @ 34

²⁴ For example, Prosecution Witness BTH, Karemera Defence Witness UOW, and Nzirorera Defence Witnesses Reverien Uwurukundo, Jean Damascene Niyoyita, Assiel Ndisetse, Dismas Nzanana, and Witnesses 2,6,16, and 17.

²⁵ Exhibit DNZ-444

²⁶ Transcript of 9 April 2008 @ 16

²⁷ Transcript of 9 April 2008 @ 7

²⁸ Transcript of 9 April 2008 @ 12

²⁹ Transcript of 9 April 2008 @ 22

³⁰ Transcript of 21 April 2008 @ 43

³¹ Transcript of 9 April 2008 @ 12

³² Transcript of 9 April 2008 @ 12

24. Witness BDW's name is printed on the bottom of each page of Exhibit DNZ-444 and he has signed next to his name. He testified that "every time I prepared a document I made a point of signing on each page."³³ However, the other two documents he signed, Exhibits DNZ-440 and DNZ-441 only contained his name and signature at the end of the entire document.

25. Witness BDW first claimed that the first page of Exhibit DNZ-441 did not bear his name and therefore he could not sign it.³⁴ When confronted with the fact that his name was indeed on the first page, at the top, he claimed that he did not sign his name at the bottom because the two pages dealt with the same subject, whereas on DNZ-444, the second and third pages dealt with different subjects.³⁵ This was refuted by a comparison of the two documents, which showed that on each, the page break was between points 2 and 3 of the document.³⁶

26. On exhibit DNZ-444, Witness BDW wrote the words "continuation of my testimony" and the place and date on the second and third pages, whereas he did not have any such notations on DNZ-440 and 441. He denied that this phrase was added to make it look like pages two and three were connected to page one.³⁷

27. Witness BDW wrote "Kibuye" in all capital letters on the top of the first page, and in lower case letters on the top of the second and third pages of Exhibit DNZ-444. He also wrote his name in all capital letters on the bottom of the first page and in lower case letters on the bottom of the second and third pages. His signature also appeared different on the first page from that on the second and third pages. Witness BDW said his writing could change depending on the time of day.³⁸

28. Witness BDW acknowledged that page one of Exhibit DNZ-444 was on plain paper while the second and third pages were written on lined paper. He claimed that after he had written the first page, he did not have access to similar paper when writing the second and third pages.³⁹

³³ Transcript of 9 April 2008 @ 13

³⁴ Transcript of 9 April 2008 @ 13

³⁵ Transcript of 9 April 2008 @ 15

³⁶ Transcript of 9 April 2008 @ 16

³⁷ Transcript of 9 April 2008 @ 20-22

³⁸ Transcript of 9 April 2008 @ 22-23

³⁹ Transcript of 9 April 2008 @ 24

29. Witness BDW wrote Exhibit DNZ-444 in pen, not pencil. When confronted with the fact that the second and third pages appeared to be written with a different pen than the first page, Witness BDW claimed that he did not remember whether or not he had to change pens during the drafting.⁴⁰ He denied adding the reference to 1993 to the "subject" line of the first page while drafting the second and third pages.⁴¹

30. Witness BDW was confronted with the fact that there was a subject heading on the document at page one, and then page two started with a subject heading. If it was one document, there would be no need to have another subject heading. He claimed that he added the heading because he was changing the subject to deal with 1993 events.⁴²

31. Witness BDW acknowledged that the second page began with a different topic than that upon which he had ended the first page.⁴³

32. Witness BDW made a number of points on the first page which he did not number, but after the subject paragraph on page two, he began numbering his points, starting with the number 1. He claimed that he put in numbers where he thought it was necessary.⁴⁴

33. When asked why he had first addressed the events of April 1994 (page one) and, then 1993, then back to May, 1994 (pages two and three), Witness BDW said that he followed a certain chronology.⁴⁵

34. When asked why in the document written for gacaca of Kibuye Witness BDW included the presence of Nzirorera at the meeting at Kibuye stadium, but made no mention of Nzirorera when discussing the same meeting in the document he submitted to the Ruhengeri prosecutor, which he asked be considered by the ICTR, Witness BDW said that the document sent to the prosecutor was only a summary.⁴⁶

35. Witness BDW produced the original of Exhibit DNZ-444 for the second time on 9 April 2008. It was marked as Exhibit DNZ-445. The paragraphs on page one of the document were now numbered 1, 2, and 3. Witness BDW denied adding those numbers

⁴⁰ Transcript of 9 April 2008 @ 24

⁴¹ Transcript of 9 April 2008 @ 25

⁴² Transcript of 9 April 2008 @ 26

⁴³ Transcript of 9 April 2008 @ 26

⁴⁴ Transcript of 9 April 2008 @ 27

⁴⁵ Transcript of 9 April 2008 @ 27

⁴⁶ Transcript of 9 April 2008 @ 31-32

and claimed that was not how he made his figures.⁴⁷ However, the document was handled only by a WVSS employee and the courtroom deputy, both of whom said they had not added anything to the document.⁴⁸

36. The prosecution informed the Trial Chamber that it had been unable to locate the document dated December 2002 in the archives of the Kibuye prison.⁴⁹

37. Witness BDW then produced four documents he had sent to Rwandan judicial authorities to show that he had used different pens and different shades of paper on other documents.⁵⁰

38. One of these documents was a four page document dated 20 October 2002 in which he refuted the testimony of witnesses against him. Witness BDW asserted that all four pages were part of the same document when he handed over on 20 October 2002. The third page was written on lined paper and different pens were used within the document.⁵¹

39. Another of the four documents was a single page document with the words "suite 3" written at the top.⁵² Its numbering was exactly the same as that on page 2 of the 4-page document, and the numbers were converted to hypens at the end of page 3. The four page document;s fourth page began with hyphens just as the "suite 3" document had ended. In addition, the numbers on page 2 and the "suite 3" document were written in both black and red ink.⁵³

40. Witness BDW denied that he had created another montage to show that he could use different paper and ink in the same document in support of his claim that the December 2002 document which mentioned Karemera and Nzirorera was genuine.⁵⁴

41. The October 2002 document made no mention of Karemera, nor of Witness BDW's own participation in training of Interahamwe. He denied having a firearm. However, he claimed this was not false because he did not use his firearm in that area.⁵⁵

⁴⁷ Transcript of 9 April 2008 @ 42-43,45

⁴⁸ Transcript of 9 April 2008 @ 50

⁴⁹ Transcript of 17 April 2008 @ 24 (Status Conference)

⁵⁰ Transcript of 9 April 2008 @ 46

⁵¹ Transcript of 17 April 2008 @ 46-47; Exhibit #DNZ-463

⁵² Transcript of 17 April 2008 @ 48; Exhibit #DNZ-464

⁵³ Transcript of 17 April 2008 @ 49

⁵⁴ Transcript of 17 April 2008 @ 51

⁵⁵ Transcript of 17 April 2008 @ 51-52

42. Witness BDW also claimed not to have spoken with Witness AXA in Ruhengeri prison, despite the fact that they lived in the same cell block and were from the same commune.⁵⁶ Witness BDW denied providing the name of Witness AXA to the OTP investigator on 4 November 2004 as someone who had evidence against Karemera and to telling the investigator that he had no evidence against Karemera in 1994.⁵⁷

ii. Witness G

43. Witness G, a member of the national committee of Interahamwe, who attended many MRND rallies in Rwanda during 1992-94 testified that he never heard Nzirorera, Ngirumpatse, or Karemera characterize the Tutsi as the enemy at any MRND rallies. He never heard any speeches by Nzirorera where he talked about the enemy.⁵⁸

iii. Witness T

44. Witness T, a member of the national committee of Interahamwe, who attended many MRND rallies in Rwanda during 1992-94 testified that MRND leaders like Ngirumpatse never condemned the Tutsi ethnic group, nor labeled them an enemy.⁵⁹

b. Defence evidence

45. **Karemera Witness KBL** testified that he was a member of the MRND prefectural committee from Kibuye⁶⁰ He never heard of any MRND rally at Gatwaro stadium in June 1993.⁶¹

46. **Karemera witness Mathias Hitiyaremye**, who was permanent secretary of MRND in Kibuye in 1993, testified that there were no MRND rallies in June 1993 at Gatwaro stadium.⁶² Nzirorera never came to Kibuye during that period. Had he come, the witness would surely have known about it.⁶³

47. **Karemera Witness XCU** testified that, contrary to the testimony of Witness BDW, she never attended any MRND meeting at Gatwaro stadium.⁶⁴

⁵⁶ Transcript of 28 November 2007 @ 20

⁵⁷ Transcript of 8 April 2008 @ 39; Exhibit #DNZ-443

⁵⁸ Transcript of 18 October 2005 @ 21

⁵⁹ Transcript of 31 May 2006 @ 34

⁶⁰ Transcript of 9 July 2008 @ 56

⁶¹ Transcript of 9 July 2008 @ 49

⁶² Transcript of 15 July 2008 @ 52

⁶³ Transcript of 15 July 2008 @ 52

⁶⁴ Transcript of 14 November 2008 @ 9

48. **Karemera Witness UOW**, who was incarcerated with Witness BDW in Ruhengeri prison, testified that Witness BDW was one of the prisoners who was recruited to give false testimony against persons in Arusha.⁶⁵

49. **Karemera Witness EPJ** was an official of Gitesi commune in Kibuye prefecture, where Gatwaro stadium is located.⁶⁶ He testified that he never heard of an MRND rally being held at Gatwaro stadium in June 1993. He never heard that Joseph Nzirorera had come to Kibuye in 1993 or 1994.⁶⁷

50. **Edouard Karemera** testified that there was no MRND meeting at Gatwaro stadium in June 1993.⁶⁸

51. **Joseph Nzirorera** will testify that he never attended any MRND rallies in Kibuye.

52. **Clement Kayishema** was Prefet of Kibuye. In a written statement admitted pursuant to Rule 92 *bis*, he refuted the testimony of Witness BDW that he attended an MRND rally at Gatwaro Stadium in June 1993. No such meeting took place, as he was the one who would have had to grant a permit for the MRND to hold such a meeting. He never attended any such meeting.⁶⁹

53. **Donatille Niyitegeka**, was a former MP for Kibuye. In a written statement admitted pursuant to Rule 92 *bis*, she refuted the testimony of Witness BDW that she had attended an MRND rally in June 1993 at Gatwaro Stadium in Kibuye. In fact, she had become a member of the MDR party in 1991.⁷⁰

54. **Augustin Karara**, the former bourgmestre of Gitesi commune in Kibuye, has testified in a written statement admitted pursuant to Rule 92 *bis*, that, contrary to the testimony of Witness BDW, he has no recollection of having attended an MRND meeting in Gatwaro stadium in June 1993.⁷¹

55. **Cyprien Munyampundu**, President of the MRND for Kibuye prefecture, will testify, if allowed, that the MRND held no rallies in Gatwaro stadium during 1993. He never attended any such meeting.

⁶⁵ Transcript of 26 March 2009 @ 34-35; Exhibit DK-111

⁶⁶ Transcript of 31 March 2009 @ 51 (CS)

⁶⁷ Transcript of 31 March 2009 @ 62

⁶⁸ Transcript of 20 May 2009 @ 39-40

⁶⁹ Exhibit DNZ-647

⁷⁰ Exhibit DNZ-679

⁷¹ Exhibit DNZ-469

56. **Witness 57** will testify that he was recruited by Witness BDW in Ruhengeri prison to fabricate a story about this meeting. He provided false information to the ICTR Office of the Prosecutor, mirroring the testimony of Witness BDW, and was listed as a prosecution witness for this trial.

57. **Kim Hughes**, a forensic document examiner, will testify to the results of his analysis of the documents presented by Witness BDW to the Trial Chamber. His analysis supports the contention by Mr. Nzirorera that Witness BDW fabricated portions of the documents to falsely assert that he had accused Mr. Nzirorera before he arrived in Ruhengeri prison.

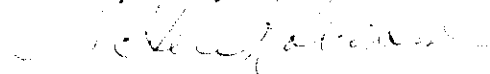
58. **Dick Prudence Munyeshuli**, investigator for the Nzirorera defence team, will testify that the other persons who Witness BDW claimed were in attendance at the MRND rally cannot be located.

III.

CONCLUSION

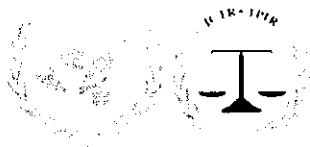
59. Mr. Nzirorera is confident that the Trial Chamber will see through the lies of Witness BDW and will conclude that there is insufficient evidence to hold Mr. Nzirorera responsible for any events in Kibuye prefecture.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera



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COURT MANAGEMENT SECTION
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