

kin. 98-44-I
10-10-2003
(6334 - 6332)

6334
Zup



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Original: English

TRIAL CHAMBER III

Before: Judge Lloyd G. Williams, Q.C., Presiding
Judge Andréia Vaz
Judge Khalida Rachid Khan

Registrar: Adama Dieng

Date: 10 October 2003

JUDICIAL RECORDS/PROCES-VERBAUX
ICTR
2003 OCT 10 A 11:35
Dieng

THE PROSECUTOR

v.

JOSEPH NZIRORERA et al.

Case No. ICTR-98-44-I

**DECISION ON THE DEFENCE MOTION FOR RECONSIDERATION OF
SANCTIONS IMPOSED IN DECISION ON THE DEFENCE REQUEST FOR LEAVE
TO INTERVIEW POTENTIAL PROSECUTION WITNESSES JEAN KAMBANDA,
GEORGES RUGGIU, AND OMAR SERUSHAGO**

Counsel for the Accused:
Peter Robinson and Dior Diagne

Counsel for the Co-Accused:
Didier Skornicki and John Traversi
David Hooper and Andreas O'Shea
Charles Roach and Frédéric Weyl

Office of the Prosecutor:
Don Webster
Tamara Cummings-John

EW

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber III, composed of Judges Lloyd G. Williams, Q.C., Presiding, Andréia Vaz and Khalida Rachid Khan (“Chamber”);

CONSIDERING the Chamber’s Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu, and Omar Serushago rendered in the present Case on 29 September 2003 (“Decision of 29 September 2003”);

BEING SEIZED of the “Motion for Reconsideration of Sanctions Imposed in Decision on the Defence Request for Leave to Interview Potential Prosecution witnesses Jean Kambanda, Georges Ruggiu, and Omar Serushago”, filed on 10 October 2003 by the Defence for Accused Joseph Nzirorera (respectively, “Motion” and “Accused”);

CONSIDERING that the Prosecutor did not file a reply to the Motion before expiry of the deadline of five days envisioned in Rule 73(E) of the Rules of Procedure and Evidence (“Rules”), and that he did not seize the Chamber of a motion for extension of time to file such a reply;

CONSIDERING the Statute of the Tribunal (“Statute”) and the Rules;

NOW REVIEWS the Motion, pursuant to Rule 73(A) of the Rules, solely on the basis of the written brief filed by the Defence.

1. In the Decision of 29 September 2003, the Chamber, in the person of Judge Andréia Vaz, ruling as a single judge designated by the Chamber pursuant to Rule 73(A) of the Rules, dismissed a Motion filed by the Defence for Accused Nzirorera for leave to interview potential prosecution witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago.
2. The Chamber noted, in the Decision of 29 September 2003, that none of these potential witnesses appeared to be among the witnesses protected pursuant to the Decision on the Prosecutor’s Motion for Protective Measures for Witnesses of 12 July 2000, which includes an Order requiring the Defence for Accused Nzirorera, *inter alia*, to make a written request, to the Chamber or a Judge thereof to contact any protected victim or potential Prosecution witness or any relative of such person (“Contact Order of 12 July 2000”).
3. The Chamber further noted, in the Decision of 29 September 2003, that the Defence had not submitted that it had contacted the Prosecutor so as to obtain his agreement to an interview with these potential prosecution witnesses, and that it had not submitted that the Prosecutor had refused to authorise or facilitate such interview.
4. Having dismissed the Motion, the Chamber further directed the Registrar, pursuant to Rule 73(F) of the Rules, to deny to the Defence payment of any fees or costs associated with its preparation, as the Motion was deemed frivolous and an abuse of process (“Order II of the Decision of 29 September 2003”).



5. The Defence is now requesting the Chamber to reconsider Order II of the Decision of 29 September 2003, arguing:

(i) That the Contact Order of 12 July 2000 is not, by its terms, limited to protected witnesses and the Defence considered that, given the language of the Decision, he would be risking violation of this Order if he did not seek leave of the Chamber to contact the potential witnesses in question;

(ii) That in fact, the Defence had discussed his request to interview prosecution witnesses with the Prosecutor, and that the latter replied that he would not facilitate such interviews, unless ordered by the Trial Chamber.

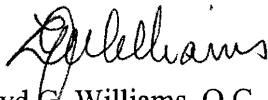
6. The Chamber considers that none of the reasons submitted in support of the Motion constitute special circumstances warranting a reconsideration of Order II of the Decision of 29 September 2003. The Chamber particularly emphasises that the issue raised at paragraph 5(ii) above should have been brought to the Chamber's attention at the time of filing of the Motion dismissed in the Decision of 29 September 2003, as this was an issue that Counsel was aware of at the time.

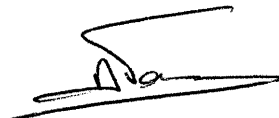
FOR THE ABOVE REASONS,


THE TRIBUNAL

DISMISSES the Motion.

Arusha, 10 October 2003


Lloyd G. Williams, Q.C.,
Presiding Judge


Andréia Vaz


Khalida Rachid Khan
Judge

