



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
11-10-2005  
(24383 - 24380)  
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Zumpf

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Emile Francis Short  
Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 11 October 2005

**THE PROSECUTOR**

v.

**Édouard KAREMERA**  
**Mathieu NGIRUMPATSE**  
**Joseph NZIRORERA**

*Case No. ICTR-98-44-T*

2005 OCT 11 P 3:43  
D. Dieng

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION OR  
CERTIFICATION TO APPEAL DECISION ON MOTION FOR ORDER  
ALLOWING MEETING WITH DEFENCE WITNESS**

*Rule 73(B) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Gregory Lombardi  
Iain Morley  
Gilles Lahaie  
Sunkarie Ballah-Conteh  
Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Mathieu Ngirumpatse**  
Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson

B

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

**SITTING** as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Emile Francis Short, and Gberdao Gustave Kam (“Chamber”);

**BEING SEIZED** of “Joseph Nzirorera’s Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness” (“Motion”), filed by the Defence for Joseph Nzirorera (“Defence”) on 13 July 2005; and of (?) the supplemental filings in support of the said Motion, filed respectively on 19 August 2005 and on 23 September 2005 by the Defence;

**CONSIDERING** the Prosecution’s Response thereto filed on 25 July 2005;

**DECIDES** as follows pursuant to Rule 73(A) of the Rules of Procedure and Evidence (“Rules”).

### INTRODUCTION

1. On 13 July 2005, the Chamber granted Joseph Nzirorera’s Motion for an order allowing a meeting between his Counsel and Defence Witness Georges Rutaganda without the presence of a representative of the Prosecution. The Chamber however authorized the meeting to take place in the presence of a representative of the Registrar. Georges Rutaganda is presently being held in the United Nations Detention Facility (UNDF) serving his sentence after the Tribunal convicted him for genocide.
2. Joseph Nzirorera seeks the Chamber to reconsider its previous Decision of 13 July 2005 by allowing the interview in the absence of any third party. Alternatively, if the Chamber maintains its Decision, he requests a certification to appeal the said Decision pursuant to Rule 73 (B) of the Rules.

### DISCUSSION

3. Joseph Nzirorera argues that the Chamber’s Decision allowing the Defence to meet Georges Rutaganda in the presence of a representative of the Registrar amounts to denying him access. On 18 August 2005, Georges Rutaganda refused to proceed with the meeting in the presence of the representative of the Registry.
4. Joseph Nzirorera contends that detainees receive confidential material and meet freely every day in United Nations Detention Unit. It is specious to contend that a meeting between the Defence Counsel for Joseph Nzirorera and Georges Rutaganda without a third party will prejudice the Prosecutor’s interests.
5. Joseph Nzirorera argues that the Chamber’s Decision violates the principle of equality of arms inasmuch as there is a restriction of communication between the Defence and one of its witness but not between the Prosecutor and his witnesses. The fairness of the trial could also be affected as the Chamber declined to provide every facility to the Defence in the preparation of its case.

6. Alternatively, Joseph Nzirorera proposes that the Chamber allows the meeting with Georges Rutaganda, as it was decided by the Trial Chamber II in *Butare* case,<sup>1</sup> and directs the Registry to ensure that he will not have in his possession any documents during the said meeting.

7. The Prosecutor contends that there is neither valid ground for reconsideration nor a legitimate basis for certification to appeal.

8. The Chamber recalls that although the Rules do not explicitly provide for reconsideration, the Chamber has an inherent power to reconsider its own decisions. However, it is clear that reconsideration is an exceptional measure that is available only in particular circumstances. Reconsideration is permissible when a new fact has been discovered that was not previously known to the Chamber,<sup>2</sup> where new circumstances have arisen since the filing of the impugned decision that affect the premise of the impugned decision,<sup>3</sup> or where one party shows an error in law or an abuse of discretion at the time of decision, that led to an injustice.<sup>4</sup>

10. The Chamber notes that Georges Rutaganda wrote a letter dated 25 July 2005 explaining the reasons for his refusal to meet Peter Robinson in the presence of the representative of the Registrar or any third party.

11. In his second supplemental filing in support of his Motion, Joseph Nzirorera refers to a Decision of Trial Chamber II in *Butare* case.<sup>5</sup> The Defense for Ntahobali proposed an alternative to its request: to be authorised to meet Georges Rutaganda with the additional condition that the latter does not attend the interview with any documents.<sup>6</sup> In its response, the Prosecution requests the Chamber to grant the Motion on condition that Georges Rutaganda is not in possession of any documents at the meeting.<sup>7</sup> The Chamber granted the Defence for Ntahobali request by specifying that Georges Rutaganda “shall not have any documents in his possession during the meeting”.<sup>8</sup>

<sup>1</sup> The PROSECUTOR v. Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI, *Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T*, Décision on the “requête d’Arsène Shalom Ntahobali en autorisation de rencontrer le détenu Georges Rutaganda en l’absence d’un représentant du procureur et du greffe” (TC), 22 Septembre 2005.

<sup>2</sup> *The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Nyiramasuhuko Motion for reconsideration of the “Decision on Defence Motion for Certificate to Appeal the ‘Decision on Defence Motion for a Stay of Proceedings and Abuse of Process’” (TC), 20 May 2004, p.3.

<sup>3</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Ngeze’s Motion for reconsideration of the Decision Denying an Extension of Page Limits His Appellant Brief (AC), 11 March 2004, p. 2.

<sup>4</sup> *Prosecutor v. Zdravko Mucic et al.*, Case IT-96-21-Abis, Judgment on Sentence Appeal (AC), 8 April 2003, para. 49; *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-A, Decision on Eliézer Niyitegeka’s Urgent Motion for Reconsideration of Appeals Chamber Decision dated 3 December 2003 (AC), 4 February 2004, p. 4; *Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Decision on Application for Reconsideration of Amicus Curiae Application of Paul Bisengimana (AC), 19 May 2004, p. 2; *The Prosecutor v. Théoneste Bagosora*, Case No. ICTR-98-41-T, Decision on Prosecutor’s Motion for Reconsideration of the Trial Chamber’s “Decision on Prosecutor’s Motion for Leave to vary the Witness List Pursuant to Rule 73Bis (E)” (TC), 15 June 2004, para. 15.

<sup>5</sup> The PROSECUTOR v. Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI, *Case No. ICTR-97-21-T, Joint Case No. ICTR-98-42-T*, Décision on the “requête d’Arsène Shalom Ntahobali en autorisation de rencontrer le détenu Georges Rutaganda en l’absence d’un représentant du procureur et du greffe” (TC), 22 Septembre 2005.

<sup>6</sup> *Ibidem*, para. 11.

<sup>7</sup> *Ibidem*, para. 23.

<sup>8</sup> *Ibidem*, para. 32.

12. In the instant case, while the Prosecutor in *Karemera and al.* case opposes the Motion, the Chamber recalls that it is the Prosecutor in *Butare* case who sought the presence of a third party in the meeting between Georges Rutaganda and Counsels for Defence. Further, the Registry automatically applied the said measures to the Defence counsel for Joseph Nzirorera. The new developments of the same issue in *Butare* case shows that the Prosecutor is not opposing anymore the meeting in the absence of a third party, provided that Georges Rutaganda does not attend the interview with any documents. The Chamber infers that the integrity of the process and the right of the accused will be preserved if the meeting between the Defence counsel for Joseph Nzirorera and Georges Rutaganda is allowed under the same condition.

13. It is the Chamber's view that new circumstances have arisen since the filing of the impugned Decision which allow its reconsideration. Consequently, the Chamber finds that the Defence counsel for Joseph Nzirorera and the Detainee Georges Rutaganda can meet without the presence of any third party, and orders that the latter shall not have any documents in his possession during the said meeting.

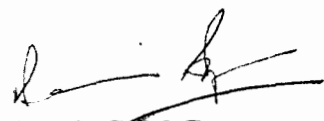
14. In addition, the Chamber reminds the Defence counsel for Nzirorera that he also is bound by the confidentiality of any names mentioned and details Georges Rutaganda may reveal in the course of the intended meeting in accordance to Rule 75 (F) of the Rules.

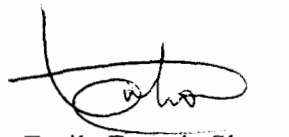

15. Consequently, the Chamber finds unnecessary to consider the Defence arguments on the certification to appeal the said Decision pursuant to Rule 73(B) of the Rules.

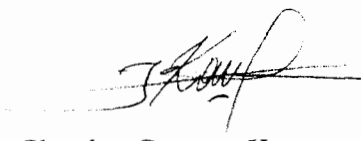
**FOR THE ABOVE MENTIONED REASONS, THE CHAMBER**

- I. **GRANTS** the Motion that the Defence counsel for Joseph Nzirorera and Mr. Georges Rutaganda meet in the absence of the Registry or any third part;
- II. **DIRECTS** the Registry to facilitate the above-mentioned meeting ensuring that Georges Rutaganda shall not have in his possession any documents at the above-mentioned meeting;
- III. **REMINDS** the Defence counsel for Joseph Nzirorera of its obligations under Rule 75(F) of the Rules

Arusha, 11 October 2005, done in English.

  
 Dennis C. M. Byron  
 Presiding

  
 Emile Francis Short  
 Judge  


  
 Gberdao Gustave Kam  
 Judge