ICTR-98-44-T
12-7-2006
(27069 - 27067)

27069

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 12 July 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

DECISION ON JOSEPH NZIRORERA'S NOTICE OF VIOLATION OF RULE 68 AND MOTION FOR REMEDIAL MEASURES

Rule 68(A) of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
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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 and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. The proceedings in the instant case started on 19 September 2005. On 9 March 2006, the Chamber delivered an Oral Decision on Joseph Nzirorera's Motion for Inspection of Non-Rule 68 Material allowing the Accused to inspect some statements in the Prosecution's possession provided by Célestin Sezibera, Djuma Babizunturo, and Grégoire Niyimanzi.[1] After having reviewed these statements, Joseph Nzirorera contends that they contradict the testimony of Prosecution Witness UB, and consequently the Prosecutor's original representations that the statements were not exculpatory were incorrect. This application is for remedial measures as a result of the Prosecution's breach of its obligations to disclose exculpatory material under Rule 68 of the Rules of Procedure and Evidence.[2] The Prosecutor opposes the Motion.[3]

DISCUSSION

2. The Chamber recalls that the Prosecutor has a positive and continuous obligation under Rule 68(A) of the Rules to disclose, as soon as practicable, to the Defence any material which, in his actual knowledge, may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of the Prosecutor's evidence. If the Accused wishes to show that the Prosecutor is in breach of these obligations, it must identify specifically the materials sought, present a *prima facie* showing of its probable exculpatory nature, and prove the Prosecutor's actual knowledge of the materials requested.[4]

3. In his Motion, Joseph Nzirorera details the differences between the statements of Célestin Sezibera, Grégoire Niyimanzi and the testimony of Witness UB. He mainly contends that in their statements, Sezibera and Niyimanzi did not mention a meeting chaired by Nzirorera in April 1994, while Witness UB testified that both Sezibera and Niyimanzi were present at that meeting.

4. The Chamber has reviewed the statements signed by Grégoire Niyiramanzi on 18 June 2003 and by Célestin Sezibera on 9 November 2005. However, according to the jurisprudence of this Tribunal, the mere omission of a reference to a meeting in a statement does not mean that these witnesses could not have attended it or that this meeting could not have taken place.[5]

5. In the light of the foregoing, the Chamber concludes that Joseph Nzirorera has failed to demonstrate a violation of Rule 68(A) of the Rules by the Prosecutor in this respect. Consequently, the Chamber finds it unnecessary to consider the remedial measures sought by Joseph Nzirorera.

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[1] *Karemera et al.*, Oral Decision on the Motion for Inspection of Non-Rule 68 Material (TC), 9 March 2006.
[2] Notice of Violation of Rule 68 and for Remedial Measures, filed on 13 March 2006; and Reply Brief: Notice of Violation of Rule 68 and for Remedial Measures, filed on 16 March 2006; and Reply Brief: Notice of Violation of Rule 68 and for Remedial Measures, filed on 16 March 2006.
[3] Prosecutor's Response to Nzirorera's Motion for Remedial Measures, filed on 15 March 2006.
[5] *Karemera et al.*, Oral Decision on Stay of Proceedings (TC), 16 February 2006, p. 6.
[5] *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R, Decision on Request for Review (AC), 30 June 2006, para. 70.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 12 July 2006, done in English

Dennis C. M. Byron	Emile Francis Short	Gberdao Gustave Kam
Presiding	Judge	Judge

[Seal of the Tribunal]