

ICTR-98-44-T
28-5-2007
(28910 - 28908)

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[Signature]



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
ORGANIZATION

Office of the President
Cabinet du Président

Before: Judge Erik Møse, President

Original: English

Registrar: Mr Adama Dieng

Date: 28 May 2007

THE PROSECUTOR

v.

JOSEPH NZIRORERA

Case No. ICTR-98-44-T

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**DECISION ON REQUEST FOR DESIGNATION OF TRIAL CHAMBER TO
CONSIDER REFERRAL TO NATIONAL JURISDICTION**

The Prosecution:

- Mr. Don Webster
- Ms. Alayne Frankson-Wallace
- Mr. Iain Morley
- Mr. Saidou N'Dow
- Ms. Sunkarie Ballah-Conteh
- Mr. Takah Sendze
- Ms. Gerda Visser

The Defence:

- Mr. Peter Robinson
- Mr. Patrick Nimy Mayidika Ngimbi

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THE PRESIDENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

BEING SEIZED of Joseph Nzirorera's "Request for Designation of Trial Chamber to Consider Referral to National Jurisdiction", filed on 29 January 2007,

NOTING the Prosecution's Response, filed on 31 January 2007, and the Nzirorera Reply, dated 1 February 2007;

HEREBY DECIDES THE REQUEST

INTRODUCTION

1. Judge Emile Short's withdrew from the *Karemera et al.* case on 19 January 2007, due to health reasons. On 24 January 2007, the President requested clarification as to whether the three Accused would consent to continue the trial with a substitute judge. With one exception, the Accused were opposed to continuing the trial in accordance with Rule 15 *bis* (C). On 6 February 2006, the President referred the matter to the Trial Chamber under Rule 15 *bis* (D). On 6 March 2007, the remaining Judges decided that continuation of the proceedings with a substitute Judge would serve the interests of justice. The Appeals Chamber rejected an appeal of that decision on 20 April 2007.¹

SUBMISSIONS

2. In its request of 29 January 2007, the Nzirorera Defence requested the President to designate a Trial Chamber, pursuant to Rule 11 *bis*, which could consider the referral of this case to an appropriate national jurisdiction other than Rwanda. It was argued that referral of the trial to a national jurisdiction is warranted due to the alleged inability of the Tribunal to complete this case within the date set forth in United Nations Security Council resolutions 1503 (2003) and 1534 (2004) for the conclusion of all trials of first instance. As the Prosecutor did not make any Rule 11 *bis* request, the President was asked to do so *proprio motu*.

3. The Prosecution submitted that Rule 11 *bis* confers no standing upon the Defence to request the President to act in the manner proposed. Designation of a Trial Chamber for Rule 11 *bis* purposes would, at that stage of the proceedings, usurp the powers vested in the remaining judges of the Trial Chamber to determine whether continuance of the proceedings in Arusha with a substitute judge would serve the interests of justice.

DELIBERATIONS

4. Subsequent to the Nzirorera request based on Rule 11 *bis*, the remaining judges of the Trial Chamber decided to continue the proceedings with a substitute Judge. The Appeals Chamber rejected the Defence appeal against that decision. It found no error in the Trial Chamber's evaluation of the United Nations Security Council resolutions pertaining to the Tribunal's Completion Strategy or in relation to Rule 11 *bis*.² Nor did it impugn the exercise by the President of his discretion under Rules 15 *bis* (C) and (D) of the Rules.³ Following the

¹ *Prosecutor v. Karemera et al.*, Decision on Appeals Pursuant to Rule 15*bis* (D)(AC), 20 April 2007.

² *Id.*, paras. 24 and 37-38.

³ *Id.*, paras. 32-34.

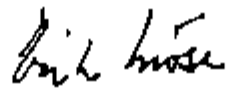
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President's request, the Secretary-General has appointed Judge Vagn Joensen as a substitute Judge, and the reconstituted Trial Chamber trial has decided to continue the trial on Monday 11 June 2007. Consequently, the Nzirorera request is moot.

FOR THE REASONS MENTIONED ABOVE, THE PRESIDENT

DENIES the Request.

Arusha, 28 May 2007.



Erik Mose
President

