

1917/H



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

ICTR-98-44-AR11bis

21 August 2007

[1917/H - 1914/H]

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar:

Mr. Adama Dieng

Decision of:

21 August 2007

PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-AR11bis

ICTR Appeals Chamber

Date: 21 August 2007

Action: P.T.

Copied To: concerned Judges,
Parquet, G25, G25, G25, LS

Archiver

**Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's
Appeal from Denial of a Request for Designation of a Trial Chamber to
Consider Referral to a National Jurisdiction**

Office of the Prosecutor:

Mr. James Stewart
Mr. Don Webster
Mr. George W. Mugwanya
Ms. Inneke Onsea

Counsel for the Defence:

Ms. Dior Diagne Mbaye and Mr. Félix Sow for Édouard Karemera
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mathieu Ngirumpatse
Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Joseph Nzirorera

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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NAME / NOM: Patrice Tchidimba

SIGNATURE: [Signature] DATE: 21/08/07

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THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively);

NOTING the "Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction", issued on 3 July 2007, which: (i) dismissed Joseph Nzirorera's appeal against the President's Decision denying a request for designation of a Trial Chamber to consider the referral of his case to a national jurisdiction ("Nzirorera Appeal"); and (ii) directed the Registry to withhold the payment of fees in relation to the Nzirorera Appeal;¹

BEING SEIZED of the "Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction", filed by Joseph Nzirorera's Counsel on 6 July 2007 ("Motion" and "Counsel", respectively), which requests the Appeals Chamber to reconsider that portion of its Decision of 3 July 2007, in which sanctions were imposed on Counsel pursuant to Rule 73(F) of the Rules of Procedure and Evidence of the Tribunal ("Impugned Finding" and "Rules", respectively);²

NOTING the "Prosecution Response to Joseph Nzirorera's Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction", filed on 12 July 2007;³ and the "Reply Brief: Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction", filed on 16 July 2007;⁴

NOTING that the Decision of 3 July 2007 imposed sanctions upon Counsel on the basis that the subject of the Nzirorera Appeal, whether or not an accused has a right to request transfer of his case to a national jurisdiction, had already been addressed and decided by the Appeals Chamber in its

¹ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR11bis, Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction, 3 July 2007 ("Decision of 3 July 2007").

² *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR11bis, Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction, 6 July 2007.

³ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR11bis, Prosecution Response to Joseph Nzirorera's Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction, 12 July 2007.

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“Decision on Appeals Pursuant to Rule 15*bis* (D)”, issued in this case on 20 April 2007 (“Rule 15*bis* (D) Appeals Decision”);⁵

NOTING that Counsel submits, *inter alia*, that the Decision of 3 July 2007 warrants reconsideration since (i) the Appeals Chamber made the Impugned Finding without first hearing him;⁶ (ii) it was reasonable to believe that the issue presented in the Nzirorera Appeal had not yet been decided;⁷ (iii) and Mr. Nzirorera’s interpretation of the Rule 15*bis* (D) Appeals Decision constituted a “new fact”, unknown to the Appeals Chamber at the time of the Impugned Finding;⁸

NOTING Counsel’s argument that the imposition of sanctions is a serious matter with consequences for professional standing and reputation, and that it may affect the exercise of the rights of the accused;⁹

RECALLING that the Appeals Chamber may reconsider a previous interlocutory decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice;¹⁰

CONSIDERING that a Chamber’s determination that a motion is frivolous and warrants sanctions is based on the Chamber’s consideration of the merits of the motion, including the context in which it was brought, and that neither the Tribunal’s Statute nor the Rules provide for counsel to be heard before the imposition of sanctions pursuant to Rule 73(F) of the Rules;

CONSIDERING that in its Rule 15*bis* (D) Appeals Decision, the Appeals Chamber unequivocally stated that “Rule 11*bis* of the Rules makes no provision for an accused to request the transfer of his case to a national jurisdiction for trial” and that, therefore, Counsel was clearly put on notice that the issue presented in the Nzirorera Appeal had been previously determined by the Appeals Chamber;¹¹

⁴ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR11*bis*, Reply Brief: Motion for Reconsideration of Decision on Joseph Nzirorera’s Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction, 16 July 2007 (“Reply”).

⁵ Decision of 3 July 2007, paras. 11, 12, referring to *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR15*bis*.3, Decision on Appeals Pursuant to Rule 15*bis* (D), 20 April 2007.

⁶ Motion, para. 2.

⁷ Motion, paras. 3-6.

⁸ Reply, paras. 4-6.

⁹ Motion, para. 7.

¹⁰ See, e.g., *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration, 1 December 2006, para. 6; *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-A, Decision on the Appellant’s Request for Reconsideration of the Order Concerning Aloys Simba’s Appellant’s Brief, 8 November 2006, p. 2; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203.

¹¹ Rule 15*bis* (D) Appeals Decision, para. 38.

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CONSIDERING FURTHER that the fact that sanctions may have repercussions on a counsel's professional standing and reputation is part of the penalty of a sanction and is not a basis for a request for reconsideration of the Impugned Finding;

CONSIDERING that abuse of process is not in the interest of an accused, and that, therefore, the denial of fees for the filing of frivolous motions has no impact on the exercise of an accused's rights;

FINDING THEREFORE that none of the arguments raised in the Motion against the Impugned Finding justify its reconsideration;

FINDING FURTHER that in light of the history of the proceedings in this case as well as the reasoning provided by the Appeals Chamber in its Decision of 3 July 2007, the Motion is manifestly ill-founded, frivolous and constitutes an abuse of process under Rule 73(F) of the Rules applicable on appeal through Rule 107;

FOR THE FOREGOING REASONS,

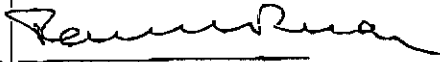
HEREBY DISMISSES the Motion; and

DIRECTS the Registry to withhold the payment of fees in relation to the filing of the Motion.

Done in English and French, the English version being authoritative.

Done this 21st day of August 2007,
At The Hague,
The Netherlands.




Judge Fausto Pocar
Presiding

UNITED NATIONS
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APPEALS CHAMBER – PROOF OF SERVICE

CHAMBRE D'APPEL - PREUVE DE NOTIFICATION

Date: 21 August 2007		Case Name / affaire: Karempera et al.		The Prosecutor v. Edouard KAREMERA Mathieu NGIRUMPATSE Joseph NZIRORERA	
		Case No / no. de l'affaire: ICTR-98-44-AR73.10			
To: A:	In Arusha <input checked="" type="checkbox"/> Judicial Archives and Records Unit Fax #: 179 5251 <input checked="" type="checkbox"/> Judge / Juge Fausto Pocar, Presiding <input checked="" type="checkbox"/> Judge / Juge Mohamed Shahabuddeen, <input checked="" type="checkbox"/> Judge / Juge Liu Daqun <input checked="" type="checkbox"/> Judge / Juge Theodor Meron <input checked="" type="checkbox"/> Judge / Juge Wolfgang Schomburg <input checked="" type="checkbox"/> Ms Catherine Marchi-Uhel <input checked="" type="checkbox"/> Mr Roman Boed <input checked="" type="checkbox"/> Concerned Associate Legal Officers <input checked="" type="checkbox"/> Ms. Fatou Fall DEFENSE <input checked="" type="checkbox"/> Accused / accusé : Mr Edouard KAREMERA, Mathieu NGIRUMPATSE, Joseph NZIRORERA (complete CMS4 Form) <input checked="" type="checkbox"/> Lead Counsels / Conseil Principal: Ms. Dior Diagne, Ms. Chantal Houmkipatin, Mr. Peter Robinson (name / nom) <input type="checkbox"/> In Arusha (complete CMS 2) <input checked="" type="checkbox"/> Fax Number: 221-822 87 12, 33 1 40 26 94 95, 1-208 694 6161 <input type="checkbox"/> Co-Counsel / Conseil Adjoint: Mr. Felix Sow, Frederick Weyl (name / nom), Mr. Patrick Nimy Mayidika Ngimbi <input type="checkbox"/> In Arusha (complete CMS 2) <input type="checkbox"/> Fax Number:				
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