

ICTR-98-44-T  
02-10-2007  
(31170-31168)

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UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 2 October 2007

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**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
Case No. ICTR-98-44-T

**DECISION ON PROSECUTOR'S APPLICATION FOR CERTIFICATION TO APPEAL  
THE CHAMBER'S DECISION ON JOSEPH NZIRORERA'S MOTION FOR INSPECTION  
OF STATEMENT OF PIERRE CELESTIN MBONANKIRA AND DECISION ON  
PROSECUTION ON CROSS-MOTION FOR ENFORCEMENT OF RECIPROCAL  
DISCLOSURE**

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

**Office of the Prosecutor:**  
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Dior Diagne Mbaye and Félix Sow

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

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. On 20 September 2007, the Chamber granted, pursuant to Rule 66 (B) of the Rules of Procedure and Evidence ("Rules"), Joseph Nzirorera's request for inspection of all the statements made by Pierre Celestin Mbonankira in the possession of the Prosecution as being material to the preparation of the defence.<sup>1</sup> In a separate decision of 21 September 2007, the Chamber denied the Prosecution's cross-motion seeking an order for reciprocal disclosure from the Defence under Rule 67 (C) of memoranda of interviews made by the Defence and for filing any notice of alibi if the Accused intend to rely on such a defence.<sup>2</sup>

2. The Prosecution now moves the Chamber to grant certification of both decisions<sup>3</sup>, arguing that "[if] the Prosecution is required to disclose witness statements of potential defence witnesses this will compromise its advocacy in effectively cross-examining witnesses, and it may also have a chilling effect on its ongoing investigations" and that the two Impugned Decisions are interconnected.

3. The Defence for Nzirorera notes that an appeal of the Impugned Decision of 20 September 2007 has become moot as a practical matter since the disclosure has been made,<sup>4</sup> but agrees that the legal principles involved are appropriate for certification.<sup>5</sup>

DELIBERATION

4. Rule 73 (B) provides that decisions pursuant to Rule 73 are without interlocutory appeal, save that the Trial Chamber "may" grant leave to file an interlocutory appeal when it significantly affects the "the fair and expeditious conduct of proceedings or the outcome of the trial" and where "immediate resolution may materially advance the proceedings". The moving party must demonstrate that both requirements of Rule 73(B) are satisfied, and even then, certification to appeal must remain exceptional.

<sup>1</sup> *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatswe and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's Motion for Inspection of Statement of Pierre Celestin Mbonankira (TC), 20 September 2007.

<sup>2</sup> *Karemera et al.*, Decision on Prosecutor's Cross-Motion for Enforcement of Reciprocal Disclosure (TC), 21 September 2007.

<sup>3</sup> Prosecutor's Application for Certification to Appeal the Decision on Nzirorera's Motion for Inspection of 20 September 2007 and the Decision on the Prosecutor's Cross-Motion for Reciprocal Disclosure of 21 September 2007 (TC), filed on 27 September 2007 ("Prosecution's Motion").

<sup>4</sup> Joseph Nzirorera's Response to Prosecutor's Application for Certification to Appeal: Rule 66(B) and Rule 67 Disclosure Issues, filed on 28 September 2007.

<sup>5</sup> *Ibidem*.

5. The Impugned Decisions concern the ambit of the reciprocal disclosure obligations of the Parties and thus touch upon the fairness of the proceedings. Further, the disclosure issues at stake affect the expeditious conduct of the proceedings and are likely to arise recurrently.

6. Although the disclosure ordered by the Impugned Decision of 20 September 2007 has been made, the Chamber finds that an immediate resolution by the Appeals Chamber on all the issues addressed by the Impugned Decisions may materially advance the proceedings.

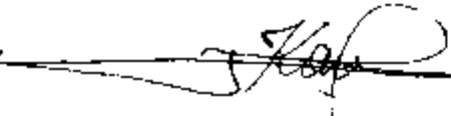
**FOR THOSE REASONS, THE CHAMBER GRANTS** the Prosecutor Motion.

Arusha, 2 October 2007, done in English.



Dennis C. M. Byron

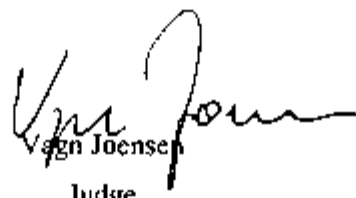
Presiding Judge



Gberdao Gustave Kam

Judge

[Seal of the Tribunal]



Vagn Joensen

Judge