

ICTR-98-44-T
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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: 3 October 2007

03 Oct 2007 [Signature]
11:20 hrs

THE PROSECUTOR

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION OF
SANCTIONS**

Rule 73 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 Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Niny Mayidika Ngimbi

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INTRODUCTION

1. The trial in this case commenced on 19 September 2005 with the presentation of the Prosecution case. During the fourth trial session, Prosecution Witness HH was called to testify before the Chamber.¹
2. On 30 July 2007, the Defence for Joseph Nzirorera applied for an *amicus curiae* to be appointed to investigate the false testimony of that witness HH.² The Chamber denied the motion and further noted that "in a motion filed some three weeks before the instant Motion, the Defence for Nzirorera requested similar relief in relation to allegations that included the falsehood of Witness HH."³ The Chamber expressed "its disapproval of this waste of resources and abuse of the process" and consequently forbid the Defence to present any bill for this motion ("Decision of 26 September 2007").
3. On 28 September 2007, the Defence for Nzirorera moved the Chamber to reconsider that portion of the Chamber's Decision.⁴ The Prosecution opposes the Motion and further requests that the fees be withheld for this latest motion for reconsideration as well.⁵

DELIBERATION

4. According to the Defence for Nzirorera, reconsideration is warranted because Chamber's Decision was erroneous on two grounds. It first notes that the facts giving rise to the second motion, namely the testimony of Prosecution Witness Fidele Uwizeye, were discovered after the first motion was filed, since Witness Uwizeye testified after the filing of the first motion and it was therefore impossible to include them earlier.⁶ The Defence second contends that the subject matter of the two motions was also different.⁷ Relying upon an Appeals Chamber's decision, the Defence submits that sanctions should be imposed cautiously bearing in mind the interests in justice, the right to a fair trial and the absence of

¹ See T. 8 to 21 November 2006.

² Joseph Nzirorera's Motion for Investigation of Witness HH for False Testimony, filed on 30 July 2007.

³ *Prosecutor v. Edouard Karemera, Mathieu Ndirumpatswe and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Defence Motion for Investigation of Prosecution Witness HH for False Testimony (TC), 26 September 2007, para. 9. The Chamber referred to Joseph Nzirorera's Motion for Appointment of Amicus Curiae: The Ndirumpatswe Letters, filed on 3 July 2007. See the Chamber's Decision also denying that motion: *Karemera et al.*, Decision on Defence Motions for Appointment of Amicus Curiae (TC), 26 September 2007.

⁴ Joseph Nzirorera's Motion for Reconsideration of Sanctions, filed on 28 September 2007 ("Nzirorera's Motion"); see also Reply Brief filed on 3 October 2007.

⁵ Prosecutor's Response to Nzirorera's Motion for Reconsideration of Sanctions, filed on 2 October 2007.

⁶ Nzirorera's Motion, para. 5.

⁷ Nzirorera's Motion, paras. 6 and 9.

appellate review.⁸ In the Defence's view, it should not be sanctioned for filing a second motion instead of an addendum to the first motion because it would then sanction the Counsel for a pure question of form.⁹

5. According to the established jurisprudence, the Chamber has an inherent power to reconsider its decisions where its decisions when (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby warranting the exceptional remedy of reconsideration.¹⁰

6. In the Chamber's view, there is no such circumstance justifying the exceptional remedy of reconsideration of its Decision of 26 September 2007.

7. In its Decision, although not explicitly mentioned, the Chamber did consider all the circumstances of the case, including the date on which the testimony of Prosecution Witness Uwize was given. The relief sought in the second motion was, however, identical with the relief sought in the first motion. It is inconceivable that the Chamber would have commissioned two investigations into the falsehood of Witness HH. Any such investigation would have inevitably had to look at the entire testimony and all allegations of falsehood. The examples contained in the second motion would have been part of the investigations in the first. In those circumstances, applying for the appointment of a second investigation, instead of filing an addendum, as suggested by the Defence, cannot therefore be characterized as a simple matter of form.

8. Furthermore, the Chamber is not satisfied that even an addendum to the first motion was necessary. The issue of ancillary proceedings to investigate the submission of Defence for Nzirorera that one or other Prosecution Witness has been found lying has been before the Chamber on numerous occasions, and the Chamber has consistently denied the motions

⁸ Nzirorera's Motion, para. 8. The Defence relies upon Karemera et al., Decision on Interlocutory Appeals Regarding Participation of Ad Litem Judges (AC), 11 June 2004; Decision on Motion to Vacate Sanctions (TC), 23 February 2005.

⁹ Nzirorera's Motion, para. 9.

¹⁰ Karemera et al., Case No. ICTR-98-44-PT, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; Karemera et al., Case No. ICTR-98-44-T, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure, 31 October 2005, para. 3; Karemera et al., Case No. ICTR-98-44-T, Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

recalling the applicable principles under the Rules and the jurisprudence of this Tribunal.¹¹ While the Chamber has not characterized the repeated attempts of the defence to get an investigation commissioned as abusive of the process, it considers that making applications for the appointment of two separate investigations into the two separate allegations of falsehood in the same witness crosses any line that could be drawn and is totally unacceptable.

9. The Statute of the Tribunal imposes duty on the Chamber to manage the trial in order to guarantee its fairness trial including that the proceedings be conducted without undue delay.¹² The Rules further provide the Chamber with the power to impose sanctions upon any Counsel who brings a motion that, in the Chamber's view, is frivolous or is an abuse of process.¹³ Filing unnecessary motions abuses the process of the trial and causes undue delay. The Appeals Chamber further held 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."¹⁴ The Chamber notes that in the present case, the Defence for Nzirorera knew that his motions had the potential to cause delay to the extent that he applied for a three week adjournment of the Trial for the Chamber to have time to adjudicate on the motions it had filed.¹⁵

10. In light of the history of the proceedings in this case as well as the reasoning provided by the Chamber in its Decision of 26 September 2007, the Chamber finds that reconsideration of its Order precluding the Defence for Nzirorera to present any bill for its motion for Investigation of Witness HH for False Testimony is not warranted. The fact that the Defence considers that unnecessary expenses are also spent by the Prosecution or the Chamber does not affect that conclusion.¹⁶ The Chamber further considers that the present Motion for reconsideration is also manifestly ill-founded, frivolous and constitutes an abuse of process under Rule 73(F) of the Rules.

¹¹ See for instance, *Karemara et al.*, Decision On Defence Motion For Investigation of Prosecution Witness Ahmed Mbonyakiza For False Testimony (TC), 29 December 2006; Decision on Defence Motion for Certification to Appeal Decision on False Testimony (TC), 27 September 2007. The Chamber also ruled orally on similar motions during the course of the proceedings.

¹² See Article 19 and 20 of the Statute.

¹³ Rule 73 (F); see also Rule 46 of the Rules.

¹⁴ *Karemara et al.*, Case No. ICTR-98-44-AR11bis, 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 (TC), 21 August 2007.


¹⁵ Joseph Nzirorera's Motion to Postpone Commencement of Sixth Trial Session, filed on 12 September 2007.



¹⁶ See Reply Brief.

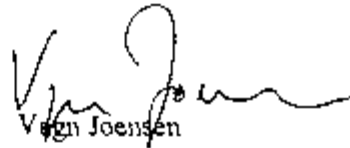
FOR THOSE REASONS, THE CHAMBER

- i. **DENIES** the Defence Motion for Reconsideration of Sanctions and,
- ii. **REQUESTS**, under Rule 73(F) of the Rules, the Registry to withhold the payment of fees in relation to the filing of the Motion.

Arusha, 3 October 2007, done in English.


 Dennis C. M. Byron
 Presiding Judge


 Gberdao Gustave Kam
 Judge
 [Seal of the Tribunal] 


 Vign Joensen
 Judge

