

ICTR-98-44-T  
09-11-2007  
(32120-32116)

32120  
A



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:** 8 November 2007

JUDICIAL RECORDS ARCHIVES  
2007 NOV - 9 A 10:00  
[Signature]

**THE PROSECUTOR**

v.

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

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

*Rule 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Don Webster  
Alayne Frankson-Wallace  
Iain Morley  
Saidou N'Dow  
Gerda Visser  
Sunkarie Baltah-Conteh  
Takeh Sendze  
Deo Mbutu

**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

[Signature]

## 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.<sup>1</sup>

2. On 30 July 2007, the Defence for Joseph Nzirorera applied for an *amicus curiae* to be appointed to investigate the alleged false testimony of Witness HH.<sup>2</sup> 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.”<sup>3</sup> The Chamber expressed “its disapproval of this waste of resources and abuse of the process” on the basis that the two applications should have been merged into one motion<sup>4</sup> and consequently forbid the Defence to present any bill for this motion (“Decision of 26 September 2007”).<sup>5</sup>

3. On 28 September 2007, the Defence for Nzirorera moved the Chamber to reconsider that portion of the Chamber’s Decision.<sup>6</sup> The Prosecution opposed the Motion and requested that the fees also be withheld for this latest motion for reconsideration.<sup>7</sup> On 3 October 2007, the Chamber denied the Defence motion for reconsideration on the ground that there is no circumstance in the present case that justifies the exceptional remedy of reconsideration.<sup>8</sup> The Chamber further held that that Motion for reconsideration was “manifestly ill-founded, frivolous and constitute[d] an abuse of process under Rule 73 (F) of the Rules” of Procedure and Evidence (“Rules”) and accordingly requested the Registry to withhold the payment of fees in relation to the filing of this Motion.<sup>9</sup>

<sup>1</sup> See T. 8 to 21 November 2006.

<sup>2</sup> Joseph Nzirorera’s Motion for Investigation of Witness HH for False Testimony, filed on 30 July 2007.

<sup>3</sup> *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, (“Decision of 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.

<sup>4</sup> Decision of 26 September 2007, para. 9.

<sup>5</sup> Decision of 26 September 2007, ruling.

<sup>6</sup> Joseph Nzirorera’s Motion for Reconsideration of Sanctions, filed on 28 September 2007; see also Reply Brief filed on 3 October 2007.

<sup>7</sup> Prosecutor’s Response to Nzirorera’s Motion for Reconsideration of Sanctions, filed on 2 October 2007.

<sup>8</sup> *Karemera et al.*, Decision on Joseph Nzirorera’s Motion for Reconsideration of Sanctions (TC), 3 October 2007, para. 6.

<sup>9</sup> *Ibid.*, para. 10.

4. On 26 October 2007, the Defence for Nzirorera filed another Motion for reconsideration of sanctions moving the Chamber to reconsider the same portion of the Decision of 26 September 2007.<sup>10</sup> The Prosecutor did not file any response to this motion.

### DELIBERATION

5. The Defence for Nzirorera contends that reconsideration is warranted because the Trial Chamber's Decision on Joseph Nzirorera's Notices of Rule 68 Violations and Motions for Remedial and Punitive Measures ("Decision of 25 October 2007") constitutes a material change in circumstances.<sup>11</sup> It recalls that in this Decision the Chamber declined to sanction the prosecution for failing to disclose exculpatory material because of the "limited jurisprudence in existence on the standards to be followed under Rule 68".<sup>12</sup> The Defence contends that applying the same reasoning, the Chamber should inquire whether there was jurisprudence on the standards to be followed in filing motions seeking similar relief based upon new facts. It argues, moreover, that there was no jurisprudence which required filing the new facts as a supplement to the existing motion, rather than as a separate motion.<sup>13</sup>

6. According to the established jurisprudence, the Chamber has an inherent power to reconsider its decisions, to be exercised as its discretion, 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, and (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.<sup>14</sup> The Chamber recalls that it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.<sup>15</sup>

<sup>10</sup> Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, filed on 26 October 2007 ("Nzirorera's Motion").

<sup>11</sup> Nzirorera's Motion, paras. 5-6, referring to *Karemera et al.*, Decision on Joseph Nzirorera's Notices of Rule 68 Violations and Motions for Remedial and Punitive Measures (TC), 25 October 2007.

<sup>12</sup> Nzirorera's Motion, para. 6; citing *Karemera et al.*, Decision on Joseph Nzirorera's Notices of Rule 68 Violations and Motions for Remedial and Punitive Measures (TC), 25 October 2007, para. 31.

<sup>13</sup> Nzirorera's Motion, paras. 7-8.

<sup>14</sup> *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).

7. The Chamber is of the opinion that the reasoning of the Chamber in the Decision of 25 October 2007 does not constitute a new material circumstance warranting the reconsideration of the Decision of 26 September 2007. The Chamber finds, indeed, that the Decision of 25 October 2007, dealing with the issue of remedial and punitive measures under Rule 68, does not relate in any way to the filing of separate motions seeking a similar relief pursuant to Rule 91, and does not therefore affect the portion of the Decision of 26 September 2007 that the Defence seeks to have reconsidered.

8. The Chamber finds that the imposition of sanctions under Rule 73 (F) was required in the present matter by the respect of the fairness of the trial and, in particular, the duty to conduct proceedings without undue delay under Articles 19 and 20 of the Statute. The Chamber recalls its finding that 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 has filed".<sup>16</sup>

9. The Chamber therefore 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 Chamber further considers that, once again, the present Motion for reconsideration is manifestly ill-founded, frivolous and constitutes an abuse of process under Rule 73 (F) of the Rules. The Chamber notes that there is no payment of fees to be withheld for the preparation of this motion.<sup>17</sup>

<sup>15</sup> See *Prosecutor v. Nzirorera et al.* ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, of 10 October 2003 at para. 6;

<sup>16</sup> *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Sanctions (TC), 3 October 2007, para. 9; referring to Joseph Nzirorera's Motion to Postpone Commencement of Sixth Trial Session, filed on 12 September 2007.

<sup>17</sup> Nzirorera's Motion, note 6.

**FOR THOSE REASONS, THE CHAMBER**

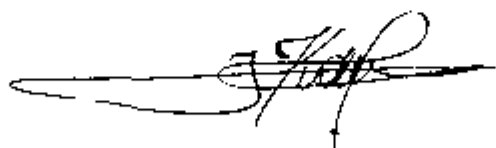
**DENIES** the Defence Second Motion for Reconsideration of Sanctions in its entirety.

Arusha, 8 November 2007, done in English.



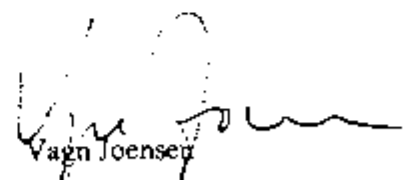
Dennis C.M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge  
[Seal of the Tribunal]



Vagn Joensen

Judge