



UNITED NATIONS
NATIONS UNIES

1082-98-44-T
8-11-2007
(32111 - 32109)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

32111
Jury
P

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 8 November 2007

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

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**DECISION TO REQUEST SUBMISSIONS CONCERNING THE DECISION TO
PROCEED IN THE ABSENCE OF JOSEPH NZIRORERA**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
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Gerda Visser
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Takeh Sendze

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 Niny Mayidika Ngimbi

1. On 11 July 2007, the Trial Chamber denied Joseph Nzirorera's request to adjourn proceedings until he would be medically fit to attend his trial, and granted his certification to appeal.¹ As a result, one day's worth of Prosecution Witness Jean Bosco Twahirwa's cross-examination was conducted by the Defence for Karemera and the Defence for Ndirumpatse in Joseph Nzirorera's absence.

2. In his submissions to the Appeals Chamber, Joseph Nzirorera requested that, should the Trial Chamber Decision be reversed, the portion of Jean Bosco Twahirwa's testimony taken in Joseph Nzirorera's absence should be excluded.²

3. On 5 October 2007, the Appeals Chamber reversed the Trial Chamber's Decision but left it to the Trial Chamber's discretion to order the remedy, if any, that it deems appropriate to cure any prejudice suffered by Joseph Nzirorera.³

4. The Trial Chamber wishes to make clear that the exclusion of evidence is at the extreme end of a scale of remedies at its disposition. Such an extreme remedy must be justified by a correlative amount of prejudice suffered. In order to properly consider the appropriate remedy for the prejudice, if any, accrued to Joseph Nzirorera by proceeding in his absence with Twahirwa's cross-examination, the Chamber requires additional submissions by the Parties.

ACCORDINGLY, THE CHAMBER

- I. **INVITES** the Parties to file submissions in relation to any remedial measures for any possible prejudice suffered by Joseph Nzirorera as a result of the Trial Chamber's Decision of 11 July 2007; and
- II. **DIRECTS**, in light of the need to resolve this question expeditiously, that such submissions be filed no later than Monday, 12 November 2007 with a right to reply by Wednesday, 14 November 2007.

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al.") (Case No. ICTR-98-44-T) Decision on Joseph Nzirorera's Motion for Stay of Proceedings While He Is Unfit to Attend Trial or Certification to Appeal (TC), 11 July 2006.

² *Reply Brief: Joseph Nzirorera's Appeal from Decision to Proceed in the Absence of the Accused*, 28 August 2007, at para. 20.

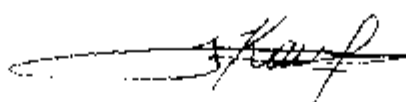
³ *Karemera et al.* (Case No. ICTR-98-44-AR73.10) Decision on Nzirorera's Interlocutory Appeal Concerning His Right to Be Present at Trial (AC), 5 October 2007, paras. 16 and 17.

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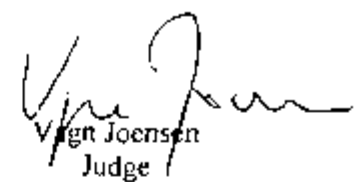
Arusha, 8 November 2007, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vigen Joensen
Judge

