



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:** 26 November 2007

**THE PROSECUTOR**

v.

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

**DECISION ON JOSEPH NZIRORERA'S APPLICATION FOR CERTIFICATION  
TO APPEAL ISSUE OF PROSECUTION'S OBLIGATION TO RECORD  
EXCULPATORY INFORMATION**

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

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## INTRODUCTION

1. By Decision of 13 November 2007 the Chamber denied Joseph Nzirorera's Motion to determine that the Prosecutor had violated Rule 68 of the Rules on Procedure and Evidence ("Rules"), accepting the Prosecutor's assertion that the material sought had not been recorded and therefore was not in his possession.<sup>1</sup>

2. In relation to Joseph Nzirorera's alternative Motion that the Chamber find that the Office of the Prosecutor ("OTP") had violated an obligation to record the material sought ("Alternative Motion"), the Chamber stated: "The Chamber notes that the Rules do not explicitly impose upon the Prosecutor an obligation to record information obtained in the course of investigations. While it may be argued that such an obligation would follow from Rule 41 (A), as read in conjunction with Rules 66 (B) and 68, the Chamber does not have a sufficient basis in the present case to make a ruling in this respect. Thus it appears from the Prosecutor's e-mails to Joseph Nzirorera that the OTP investigators 'did not take any notes because they did not find Rwabukamba's information of much use...' and that 'Rwabukamba was evasive and was supposed to come back for further conversation the next day and never showed up.'"<sup>2</sup>

3. On 14 November 2007 Joseph Nzirorera filed an Application to be granted certification to appeal the Chamber's Decision not to rule upon the issue of the Prosecutor's obligation to record exculpatory information.<sup>3</sup> The Prosecutor opposes the Application.<sup>4</sup>

## DISCUSSION

4. Under Rule 73 (B) a trial chamber may exceptionally, when certain conditions are fulfilled, grant certification to appeal *decisions*.

5. Joseph Nzirorera submits that the issue of the Prosecutor's obligation to record exculpatory information would meet the requirements pursuant to Rule 73 (B).<sup>5</sup>

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<sup>1</sup> *Prosecutor v. Édouard Karemera, Mathieu Ndirumutse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al"), Decision on Joseph Nzirorera's Fifth Notice of Rule 68 Violations and Motion for Remedial and Punitive Measures (TC), 13 November 2007

<sup>2</sup> *Karemera et al, Ibid.*, p4

<sup>3</sup> Joseph Nzirorera's Application for Certification to Appeal Issue of Prosecution's Obligation to Record Exculpatory Information, filed on 14 November 2007 ("Nzirorera's Application")

<sup>4</sup> Prosecution's Reply Brief: Application for Certification to Appeal Issue of Prosecution's Obligation to Record Exculpatory Information, filed 20 November 2007

<sup>5</sup> *Nzirorera's Application*, p2

6. The Chamber recalls that it has made no *decision* on the issue in question. The Chamber has made a factual finding that there was nothing to record and has declined to rule on a hypothetical basis. In the Chamber's opinion, therefore, this matter is inadequate for reference to the Appeals Chamber.

**FOR THOSE REASONS, THE CHAMBER DENIES** Joseph Nzirorera's Motion.

Arusha, 26 November 2007, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]