



UNITED NATIONS  
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

ICTR-98-44-T  
28-11-2007  
(32732 - 32729)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

32737  
Duffy  
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OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 28 November 2007

**THE PROSECUTOR**

v.

Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA

*Case No. ICTR-98-44-T*

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ICTR

**DECISION ON APPEALS CHAMBER REMAND ON THE RIGHT OF THE  
ACCUSED TO BE PRESENT AT TRIAL**

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## INTRODUCTION

1. On 11 July 2007, the Trial Chamber denied Joseph Nzirorera's request to adjourn proceedings until he was medically fit to attend his trial, and granted his certification to appeal ("Decision of 11 July 2007").<sup>1</sup> As a result, on 28 June 2007, the cross-examination of the Prosecution Witness Jean Bosco Twahirwa ("Witness") was conducted by Counsel for Karemera and Counsel for Ndirumpatse, in Joseph Nzirorera's absence.<sup>2</sup>

2. On 5 October 2007, the Appeals Chamber reversed the Chamber's Decision of 11 July 2007 and remanded to the Chamber, "the consideration of the prejudice, if any, accrued to the Appellant by proceeding, in his absence, with the cross-examination of [the Witness] by the other co-accused in a manner consistent with [the Appeals Chamber] Decision."<sup>3</sup> On 8 November 2007, the Chamber invited the Parties to file any submissions in relation to remedial measures for any possible prejudice suffered by Joseph Nzirorera as a result of the Chamber's Decision of 11 July 2007 no later than 12 November 2007, with a right to reply no later than 14 November 2007.<sup>4</sup>

3. On 12 November 2007, Joseph Nzirorera duly filed a request to have the proceedings held in Joseph Nzirorera's absence on 28 June 2007 declared null and void, and to order the prosecution to recall the Witness ("Defence Motion").<sup>5</sup> Joseph Nzirorera submitted that this would adequately remedy the prejudice suffered by him. On the same day, the Prosecution filed its submissions opposing the application of remedial measures ("Prosecution Motion").<sup>6</sup> On 14 November 2007, the Prosecution filed a reply opposing Joseph Nzirorera's Motion, including his request to recall the Witness ("Prosecution Reply").<sup>7</sup>

<sup>1</sup> *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.

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

<sup>3</sup> *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 ("Decision on Nzirorera's Interlocutory Appeal").

<sup>4</sup> *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera* ("Karemera et al.") (Case No. ICTR-98-44-T) Decision to Request Submissions Concerning the Decision to Proceed in the Absence of Joseph Nzirorera (TC), 5 November 2007.

<sup>5</sup> *Joseph Nzirorera's Request to Recall Prosecution Witness Jean-Bosco Twahirwa*, 12 November 2007 ("Defence Motion").

<sup>6</sup> *Prosecutor's Submission Pursuant to Trial Chamber III's Decision of 7 November 2007 Concerning Remedial Measures for Proceeding in the Absence of Joseph Nzirorera*, 12 November 2007 ("Prosecution Motion").

<sup>7</sup> *Prosecutor's Reply to Nzirorera's Request to Recall Prosecution Witness Jean-Bosco Twahirwa*, 14 November 2007 ("Prosecution Reply").

## DISCUSSIONS

4. In its Decision on Joseph Nzirorera's Interlocutory Appeal, the Appeals Chamber found that it was not satisfied that in the circumstances of this complex and lengthy case, a three-day delay to the trial was sufficient to outweigh the statutory right of the Accused to be present at his own trial, when his absence was due to no fault of his own.<sup>8</sup> It held that the Chamber's restrictions on Joseph Nzirorera's fair trial rights were unwarranted and excessive.<sup>9</sup> As a result, the Appeals Chamber remanded to the Chamber the consideration of the prejudice, if any, accrued to the Accused.

5. Joseph Nzirorera contends that his defence was prejudiced by the fact that he was not present during the cross-examination of the Witness by his co-Accused on 28 June 2007. In particular, Joseph Nzirorera submits that due to his absence on that day, he was unable to make suggestions to his counsel. Joseph Nzirorera submits that had he been present, his experience and knowledge of the events with which this trial is concerned could have been utilised by his Counsel prior to conducting his cross-examination of the Witness.<sup>10</sup>

6. The Prosecution responds that whilst Joseph Nzirorera was absent during the said proceedings, his interests were adequately represented by his Counsel.<sup>11</sup> It maintains that Joseph Nzirorera had adequate opportunity to cross-examine the Witness upon his return to court on 2 July 2007, and that all issues raised by this witness during his cross-examination when Joseph Nzirorera was absent, were subsequently addressed again by Joseph Nzirorera when he returned to court.<sup>12</sup>

7. The Prosecution further submits that the three day intervening period between the day Joseph Nzirorera was absent, and the day of his return to court, provided sufficient opportunity for Joseph Nzirorera and his Counsel to review the draft transcript of 28 June 2007 and to prepare their cross-examination of the Witness accordingly.<sup>13</sup> Finally, the Prosecution disputes that the absence of Joseph Nzirorera prejudiced his defence, on the basis that the testimony of the Witness primarily concerned the co-Accused Mathieu Ndirumpatse

<sup>8</sup> Decision on Nzirorera's Interlocutory Appeal, para. 15.

<sup>9</sup> *Ibidem*.

<sup>10</sup> Defence Motion, paras 5-6.

<sup>11</sup> Prosecution Motion, para 3.

<sup>12</sup> Prosecution Motion, para 3.

<sup>13</sup> Prosecution Motion, para 6; see also Prosecution Reply, para 7.

rather than Joseph Nzirorera, and therefore it is questionable what instructions Joseph Nzirorera could give his Counsel with regard to this witness.<sup>14</sup>


8. The Chamber finds that Joseph Nzirorera has not shown that he has suffered material prejudice as a result of the fact that the Witness was cross-examined by Counsels for the co-Accused in his absence. The Chamber further notes that Joseph Nzirorera was present during the cross-examination of the Witness conducted by his Counsel on 2 July 2007, and that this cross-examination covered the same issues as had been addressed by Counsels for the co-Accused. In addition, the Chamber observes that Joseph Nzirorera does not indicate in his submission which additional questions he would have suggested be put to the Witness, although he has had ample time to read the transcripts of the prior cross-examination and consult with his Counsel, even if he had he not been in a state to do so before his Counsel commenced his cross-examination.

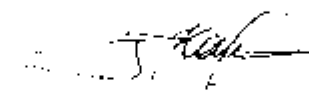
9. For the abovementioned reasons, the Chamber rejects Joseph Nzirorera's Motion and considers that the relief sought by Joseph Nzirorera is no longer applicable.

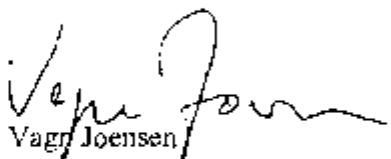
**FOR THESE REASONS, THE CHAMBER**

- I. **FINDS** that no prejudice was suffered by Joseph Nzirorera by proceeding, in his absence, with the cross-examination of the Witness by the other co-Accused on 28 June 2007, accordingly;
- II. **DENIES** Joseph Nzirorera's request to have the proceedings declared null and void, and to recall the Prosecution Witness.

*rusha*, 28 November 2007, done in English.

  
Dennis C. M. Dyon  
Presiding Judge

  
Gberdao Gustave Kam  
Judge  
[Seat of the Tribunal]

  
Vagn Joensen  
Judge

<sup>14</sup> Prosecution Motion, para 7.