



**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

UNITED  
NATIONS  
NATIONS OR: ENG  
UNIES

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 3 June 2008

**THE PROSECUTOR**

v.

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

**DECISION ON JOSEPH NZIRORERA'S SECOND MOTION FOR FINDING OF  
"NO CASE TO ANSWER" AND MOTION FOR RECONSIDERATION**

*Rules 54 and 73 (B) of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. Prosecution Witness BTH first testified in this trial between 8 and 20 June 2006. He was then recalled to testify between 9 and 17 April 2008. During the course of his most recent testimony, Witness BTH recanted his prior testimony, and claimed that Joseph Nzirorera had not been involved in the preparation and commission of genocide in Ruhengeri. Nzirorera requests that the Chamber: 1) find that there is no case to answer on paragraphs 32.1 and 62.8 of the Indictment; 2) reconsider its previous decision that paragraph 62.11 is "interrelated" with other allegations in the Indictment and to accordingly isolate this paragraph;<sup>1</sup> and 3) withdraw these three paragraphs from the Indictment. The Prosecution opposes the motion.<sup>2</sup>

## DELIBERATIONS

### (i) Preliminary Issue: Confidential Filing of the Prosecution Response

2. The Prosecution filed its Response confidentially because it refers to its confidential motion to investigate Witness BTH for false testimony. The Chamber recalls that it recently issued a decision granting the Prosecution's request to investigate Witness BTH's false testimony in these proceedings pursuant to Rule 91(B) ("Investigation").<sup>3</sup> In that decision, the Chamber concluded that it was not necessary for the filings in that matter to remain confidential, and ordered that they be re-filed as public documents. Accordingly, the Chamber considers it appropriate for the present Prosecution Response to also be re-filed as a public document.

### (ii) Request for a Finding of No Case to Answer

3. The Chamber observes that Joseph Nzirorera's request for a finding of no case to answer is based upon the assumption that Witness BTH's most recent testimony is true and his June 2006 testimony is not. The Chamber notes that since the filing of this Motion, it ordered the said Investigation. The Chamber recognised that Witness BTH's testimony relates to material issues in this case, including the alleged involvement of Nzirorera in

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<sup>1</sup> See *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera and Edouard Karemera's Motions for No Case to Answer, 19 March 2008. The Chamber further notes that in his Motion, Joseph Nzirorera recalls the Chamber's finding that paragraph 62.11 was "interrelated" to other allegations (see Motion para. 19) but requests in the first sentence of paragraph 24 that the "interrelated" test be reconsidered in regard to paragraph "62.8" (see Motion para. 24). The Chamber assumes that this reference to paragraph 62.8 is an error and should read "62.11".

<sup>2</sup> Prosecutor's Response to Joseph Nzirorera's Second Motion for Finding of No Case to Answer and Motion for Reconsideration, filed confidentially, 28 April 2008 ("Prosecution's Response").

<sup>3</sup> *Karemera et al.*, Decision on Prosecutor's Confidential Motion Pursuant to Rules 54 and 91(B) to Investigate BTH for False Testimony, 14 May 2008.

certain events in the Mukingo Commune. It ordered that the Investigation must necessarily address the extent to which BTH gave false testimony during June 2006 and April 2008, and the grounds for initiating proceedings against him for false testimony.

4. As the Investigation is ongoing, the Chamber considers that it is premature to make a decision on Joseph Nzirorera's submissions on the no case to answer issue at this stage. Moreover, the Chamber notes that all of the testimony provided by Witness BTH remains on the record, and at this stage constitutes evidence in this case. The Chamber is of the view that issues concerning the credibility of Witness BTH, and the weight to be attached to his testimony, are matters which could be determined at the end of the trial, when it considers Witness BTH's testimony in light of the totality of the evidence. Nzirorera's submissions on this issue therefore fall to be rejected.

*(iii) Request for Reconsideration of the Chamber's finding on Paragraph 62.11*

5. The Chamber recalls that it has an inherent power to exercise its discretion to reconsider its decisions where: (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 demonstrated a clear error of reasoning or constituted an abuse of power on the part of the Chamber, resulting in an injustice which warrants reconsideration. As reconsideration is an exceptional remedy, the requesting party must demonstrate that special circumstances exist to warrant it.<sup>4</sup>

6. Joseph Nzirorera submits that: (i) he has several new witnesses to the events in Mukingo commune which he will need to call, solely to rebut allegations of his telephone calls to Mukingo and Busengo referred to in paragraph 62.11; (ii) there is no evidence to support this allegation; (iii) the number of defence witnesses which he will need to call in order to rebut the allegations in paragraph 62.11 constitutes a "new fact" not known to the Chamber at the time it made its initial decision; (iv) isolation of this paragraph would obviate the need for him to call these witnesses; and (v) the decision was erroneous, as the Chamber did not take into account the impact that its ruling would have on the expeditiousness of the trial.

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<sup>4</sup> *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; see also *Nahimana et al.*, Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005 (AC), 4 February 2005, p. 2; *Barayagwiza*, Decision on Prosecution's Motion for Review or Reconsideration (AC), 7 April 2000, paras. 37, 41.

7. The Chamber considers that Joseph Nzirorera has failed to establish that exceptional circumstances exist which warrant reconsideration. Nzirorera has not substantiated his argument that the need for him to call witnesses on this allegation constitutes a "material change in circumstance." This allegation was contained in the Indictment filed in August 2005. Nzirorera has therefore been aware that he must prepare his defence on this and other paragraphs of the Indictment: calling witnesses is obviously a necessary part of that process.

8. Moreover, the Chamber considers that Joseph Nzirorera has failed to substantiate his submission that this Chamber did not take into account the expeditiousness of the trial, when making its no case to answer decision. Indeed, the Chamber discussed at length its obligation to ensure a fair and expeditious trial, recognising that the withdrawal of allegations for which no evidence was led has the benefit of "clarifying the case which the defence has to answer." Nonetheless, the Chamber emphasized that "the promotion of a fair trial does not require a paragraph by paragraph analysis of the Indictment to eliminate any allegation on which evidence has not been led, or to evaluate the quality of evidence that has been adduced." It indicated that such an approach "is not appropriate to this case, where the Indictment contains inter-dependent allegations describing a series of events which seeks to cumulatively establish a systematic, continuing criminal campaign." It was in the context of these considerations that the Chamber reviewed paragraph 62.11 and concluded that it formed part of a set of paragraphs containing "inter-dependent allegations on a series of events describing a systematic, continuing campaign against the Tutsi in Ruhengeri préfecture by Nzirorera." Accordingly, Nzirorera's submissions on this issue fall to be rejected.

**FOR THESE REASONS, THE CHAMBER**

- I. DENIES** Joseph Nzirorera's Motion in its entirety; and
- II. ORDERS** the Registrar to take the necessary steps to lift the confidential status of the Prosecution Motion in this matter and re-file it as a public document, and to notify the parties accordingly.

Arusha, 3 June 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge  
(Absent during signature)

Judge

Judge  
(Absent during signature)

[Seal of the Tribunal]