



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:** 3 June 2008

**THE PROSECUTOR**

v.

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

**DECISION ON THE PROSECUTION'S APPLICATION FOR CERTIFICATION TO  
APPEAL THE ORDER OF 17 APRIL 2008 IN THE DEFENCE CASE**

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

**Office of the Prosecutor:**

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Peter Robinson and Patrick Nimy Mayidika Ngimbi

## INTRODUCTION

1. On 17 April 2008, the Trial Chamber issued its “Ordonnance relative à la présentation des moyens de preuve à décharge” (“Order”). The following day, the Prosecution filed an application for certification to appeal the Order, pursuant to Rule 73(B) of the Rules of Procedure and Evidence.<sup>1</sup> It alleges that the Chamber erred in law by deciding that during cross-examination, the Prosecutor should not elicit information against the co-accused, except if it results from the examination-in-chief, or if the Counsel for the co-Accused has also examined the witness.

2. Joseph Nzirorera supports the application for certification to appeal.<sup>2</sup> Mathieu Ngirumpatse and Édouard Karemera did not respond to the application.

## DELIBERATIONS

3. In its Motion, the Prosecution contends that: 1) the parties did not raise this issue in any of its submissions and therefore the Prosecutor had no opportunity to express his views; 2) whereas the Chamber has the authority to issue orders *proprio motu* pursuant to Rule 54, it cannot exercise such discretion in a manner which contravenes the plain meaning of provisions that address the same issue: in this case, Rule 90(G) which allows the Prosecution to inquire into material which would assist in its case, even where that information was not addressed in the examination-in-chief of that witness.

4. The Chamber does not consider that the Prosecution's interpretation of the Order is accurate, but acknowledges that the manner in which it was drafted may have raised ambiguities. The Chamber further recalls its authority to issue orders as may be necessary for the conduct of trial pursuant to Rule 54, and decides *proprio motu* to reconsider the Order. The Chamber further observes that Rule 90(G) permits cross-examination on the subject matter of the evidence-in-chief, matters affecting the credibility of the witness, and, where the witness is able to give evidence relevant to the case for the cross-examining party, to the subject-matter of the case. Whether a question put by the cross-examining party falls within the scope of Rule 90(G) is a matter of judicial discretion. Pursuant to Rule 90(F), the Chamber exercises control over the mode of interrogating the witnesses, so as to make the examination effective for the ascertainment of the truth, and to avoid needless consumption of time.

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<sup>1</sup> Prosecutor's Application for Certification to Appeal the “Ordonnance Relative a la Présentation des moyens de preuve a décharge”, filed 18 April 2008.

<sup>2</sup> Joseph Nzirorera's Response to Prosecution Application for Certification to Appeal: Cross Examination Issue, filed 21 April 2008, para. 3 (CMS transmission date: 19 April 2008).

5. The Order was not intended to limit the operation of Rule 90(G). As this is a multi-accused case, the Chamber had intended to implement Rule 82(A), by giving effect to the principle that, in joint trials, each accused shall be accorded the same rights as if he was being tried separately. Accordingly, the intended restriction was against using the cross-examination of a Defence witness to build the Prosecution case against a co-Accused, who had not called or examined the witness. However, the Chamber acknowledges that the order was unnecessary, and is now even more so, in light of this Chamber's practice thus far in the current proceedings, of managing issues arising from cross-examination as they arise, on a case by case basis.

6. In view of the above clarification, the Chamber does not find it necessary to maintain its prior order, and, as a consequence, finds that the Prosecution's application is moot. The Chamber further considers that this Decision, which varies its Order, disposes of all motions filed in this matter, without prejudice to any fresh filings.

**FOR THESE REASONS, THE CHAMBER**

**I. DECIDES** to amend its Order of 17 April 2008 entitled "Ordonnance relative à la présentation des moyens de preuve à décharge"; and to remove the following order: « **III. DÉCIDE** « que le Procureur ne saurait rechercher durant son contre-interrogatoire des informations contre les co-accusés sauf si cela résulte de l'interrogatoire principal ou si le conseil du co-accusé a aussi interrogé le témoin » ; and

**II. FINDS** the Prosecution's motion for certification to appeal the Order on the issue of cross examination of witnesses is moot.

Arusha, 3 June 2008, done in English.

Dennis C. M. Byron

Presiding Judge  
(Absent during signature)

Gberdao Gustave Kam

Judge  
[Seal of the Tribunal]

Vagn Joensen

Judge  
(Absent during signature)