



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:** 15 July 2008

**THE PROSECUTOR**

v.

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

**DECISION ON JOSEPH NZIRORERA'S ORAL MOTION FOR SANCTIONS  
AGAINST SENIOR TRIAL ATTORNEY FOR VIOLATION OF NO-CONTACT  
RULE WITH WITNESS BTH**

*Rule 46 (A) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Alayne Frankson-Wallace  
Iain Morley  
Saidou N'Dow  
Gerda Visser  
Sunkarie Ballah-Conteh  
Takeh Sendze  
Deo Mbutu

**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 Nimy Mayidika Ngimbi

## INTRODUCTION

1. On 12 March 2008 the Chamber ordered that Prosecution Witness BTH be recalled for further cross-examination on the issue of false testimony.<sup>1</sup> On 17 April 2008, Prosecution Witness BTH testified that two persons, which he identified as #15 and #22 on Prosecution Exhibit P-299, informed him that they had met with the Prosecution's Senior Trial Attorney in this case, Don Webster ("the STA"), who had told them to greet BTH and to tell him that the STA could do no harm to the Witness BTH because he was a friend. Witness BTH claims that this "clear message" was an attempt to intimidate him. Counsel for Joseph Nzirorera then made an oral motion for sanctions against the STA pursuant to Rule 46 (A) of the Rules of Procedure and Evidence, for violation of the Chamber's standing order that the parties have no contact with witnesses whilst they are being examined before the Chamber. Upon the invitation of the Chamber, the parties filed written submissions. The Prosecution opposes the motion in its entirety.<sup>2</sup>

## DELIBERATIONS

3. Rule 46(A) provides that the Chamber may, after a warning, impose sanctions against Counsel if, in its opinion, Counsel's conduct remains offensive or abusive, obstructs the proceedings or is otherwise contrary to the interests of justice. This provision applies *mutatis mutandis* to Counsel for the Prosecution.

4. In his Reply Brief, Joseph Nzirorera concedes that the Chamber should not rely solely on Witness BTH's account of these conversations, and moves the Chamber to issue an interim order directing the WVSS to contact persons #15 and #22 and ask them whether the STA asked them to transmit a message to Witness BTH. Nzirorera submits that if they affirm BTH's allegation, the Chamber should impose sanctions on the STA; but if they deny the allegations, he will withdraw his motion.

5. The Chamber recalls that the allegations were made during the recent testimony of Witness BTH, in which he also claims to have given false testimony previously in this trial. The Chamber accepts that his statements, without any supporting testimony, are insufficient to ground findings of fact in this matter. The application must therefore be dismissed, unless the Chamber grants Joseph Nzirorera's request to investigate the issue.

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<sup>1</sup> *The Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al."), Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH (TC), 12 March 2008.

<sup>2</sup> T. 17 April 2008, pp. 3-5; Prosecutor's Response to Nzirorera's Motion for Sanctions in Relation to BTH. The Chamber notes that the Prosecution refers to person #23, the Chamber assumes that this is an error and should read #22; Nzirorera's Reply Brief, filed 21 April 2008; Joseph Nzirorera's Motion for Sanctions for Violation of No Contact Rule with Witness BTH, filed 22 April 2008.

6. The Chamber now considers Joseph Nzirorera's submissions in support of his request that the Chamber order WVSS to contact persons #15 and #22 to ask them whether they were ever told by the STA to pass a message on to Witness BTH. Nzirorera cites comments made by the STA during BTH's testimony on 16 April to the effect that the STA identified himself by name to all witnesses he spoke to, because the STA knew they would contact BTH, and he wanted Witness BTH to know it was him investigating BTH's Ruhengeri allegations. Nzirorera contends that these comments show that the STA expected these people to contact BTH in violation of the no contact rule. Nzirorera also criticizes the fact that the STA's Affirmation lacks detail, is unsworn, and is not supported by testimony from the other members of the team who participated in the interviews.

7. In the Chambers' view, neither the statements made by the STA nor the omission to adduce evidence or further evidence in opposition to BTH's allegations can support or confirm the allegations of BTH. The absence of an adequate factual basis to support the application makes it unnecessary for the Chamber to assess rebuttal evidence. The Chamber will note however that its invitation to respond to Joseph Nzirorera's oral motion for sanctions<sup>3</sup> did not imply an order to adduce evidence. On the contrary, had the STA made a sworn statement, it would have raised the question as to whether his status as counsel was compromised by adducing evidence in the proceedings.

8. Finally, the Chamber recalls that it has already ordered an investigation into the false testimony of Witness BTH in these proceedings.<sup>4</sup> Such an enquiry could duplicate issues under the pending investigation and prejudice its execution. Accordingly, the Chamber does not consider that this would be in the interests of justice to grant the interim order requested.

**FOR THESE REASONS THE CHAMBER DENIES** Joseph Nzirorera's Motion in its entirety.

Arusha, 15 July 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

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<sup>3</sup> *Ibidem*, p. 4.

<sup>4</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.