



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
30-7-2008
(36851 - 36847)

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 30 July 2008

The Prosecutor

v.

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

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**ORDER TO JOSEPH NZIRORERA ON THE PRESENTATION OF HIS DEFENCE
EVIDENCE**

Rules 46 and 73 ter of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Dior Diagne Mbaye et Félix Sow

Defence Counsels for Mathieu Ngirumpatse
Chantal Hounkpatin et Frédéric Weyl

Defence Counsels for Joseph Nzirorera
Peter Robinson et Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. On 25 January 2008, the Prosecutor closed his case. On 6 March 2008, the Chamber invited the parties to make submissions on various matters pertaining to the management of the Defence case pursuant to Rule 73 *ter* of the Rules of Procedure and Evidence (« Rules »).¹
2. On 24 April 2008, Joseph Nzirorera filed his second Rule 73 *ter* submission.²
3. On 2 June 2008, *ex parte* and strictly confidentially, Joseph Nzirorera filed his third submission pursuant to Rule 73 *ter* B).³

DELIBERATIONS

Preliminary question of the status of both 73 ter filings:

4. In his Second 73 *ter* submission, Joseph Nzirorera emphasizes his inability to file any specific information under the Rule 73 *ter* at this time and thus doesn't present any of the information required under that rule. Nevertheless, the Chamber dismisses this filing as being moot, since he filed a third submission under Rule 73 *ter* on 2 June 2008.
5. The Chamber notes that this third submission, which was made *ex parte*, also does not comply with the requirements of Rule 73 *ter*. Indeed, Joseph Nzirorera emphasizes that he plans to call around 180 witnesses, but he lists 289 potential witnesses. Furthermore, emphasizing that the information contained in these submission is of an anticipatory nature, Joseph Nzirorera stipulates that the summaries provided per witness might be erroneous and speculative. Nevertheless, he states his intention to file a comprehensive Pre-Defence Brief with detailed summaries *inter partes* as soon as he assesses which witnesses he would like to call. The Chamber thus considers this filing as a submission containing information about Joseph Nzirorera's intended filing under Rule 73 *ter*.

Preliminary question of the confidentiality of the submission:

6. Joseph Nzirorera filed the aforementioned submission *ex parte* and strictly confidentially. Nevertheless, the Chamber notes that at this stage of the proceedings, meaning after the

¹ *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Reconsidération de la Décision du 27 février 2008 relative à la reprise du procès et au commencement de la présentation des moyens de preuve à décharge (TC), dated 6 March 2008.

² Joseph Nzirorera's Second Rule 73 *ter* Filing, filed on 24 April 2008.

³ Joseph Nzirorera's Third Rule 73 *ter* Filing, filed on 2 June 2008.

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presentation of the Defence's case has actually started, information required under Rule 73 *ter* B) must be provided to all the parties. *Ex parte* proceedings should be entertained only where it is in the interest of justice. The Chamber is of the view that at this specific stage of the proceedings, the interest of justice requires this disclosure under Rule 73 *ter* B) to enable the other parties' preparation of their examination of the witnesses, and to assist the two co-accused, who are presenting their case before Joseph Nzirorera, in the preparation of their respective Defences.

Warning and Order to file the information requested under Rule 73 ter:

7. Rule 73 *ter* enables the Chamber to order the Defence, before the commencement of its case, but after the close of the Prosecutor's case, to file its Pre-Defence Brief, including the list of witnesses it intends to call as well as the list of the exhibits it intends to use at trial ("Rule 73 *ter* submissions"). The rule specifies that the list of witnesses should be accompanied by a summary of the facts about which the witness will testify. The Chamber reminds Nzirorera that the three Defence teams in this case were ordered to submit their respective 73 *ter* filings at the same time, before the commencement of the first co-Accused's case⁴, since disclosure of the relevant information is necessary for the fairness of the proceedings, as recalled here above. The Chamber also reminds that Karemera is currently presenting his Defence and is scheduled to complete it in the next trial session commencing on 18 August 2008.

8. Furthermore, the Chamber observes that the trial on the present indictment commenced in 2005 and that the Accused was arrested and had been receiving information on the charges against him even prior to then. Additionally, the Prosecution case was closed on 25 January 2008. The Chamber is satisfied that the Accused has had adequate time and facilities to prepare his Defence. Additional information unearthed by ongoing investigations, or the possibility of discovering further information, is no justification for failing to comply with the Rule 73 *ter* orders⁵.

9. Also, by submitting that he may not be in possession of all information in respect of each and every witness and that some of the information provided in this filing could be erroneous

⁴ *Karemera et al.*, Reconsidération de la Décision du 27 février 2008 relative à la reprise du procès et au commencement de la présentation des moyens de preuve à décharge (TC), issued 6 March 2008.

⁵ *Karemera et al.*, Décision relative à la présentation des moyens de preuve à décharge, issued on 17 April 2008, para. 10.

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or speculative, Joseph Nzirorera is making an illogical statement since he must know the intended testimony of everyone he describes as a witness.

10. Joseph Nzirorera is thus clearly in breach of this Chamber's previous orders and decisions.

11. In that regard, the Chamber recalls Joseph Nzirorera that the continuous failure to comply with its orders obstructs the proceedings and is contrary to the interest of justice.⁶ For the aforementioned reasons, the Chamber addresses a warning to Joseph Nzirorera's defence co-counsels and orders him to comply with the Rule 73 *ter* orders, as soon as possible and in any case on 13 August 2008 on the latest.

Allocation of sufficient time for the presentation of Joseph Nzirorera's Defence

12. Both the Statute and the Rules of the Tribunal mandate that the Chamber guarantees a fair and expeditious trial. In discharging this obligation the Chamber is empowered to make orders to ensure a reasonable length of time for the trial, without any infringement of the Rights of the Accused. Rule 73 *ter* specifically empowers the Chamber to exercise control over the number of witnesses and the duration of their examination.

13. The Chamber considers that the number of listed potential witnesses (289), as well as the announced number of witnesses Joseph Nzirorera actually intends to call (approximately 180 according to the submission), is extremely high in comparison to the 29 witnesses called by the Prosecution to prove its case against all three Accused. The Chamber notes that the burden of proof is on the Prosecution and never shifts to the Defence. The *ex parte* submission of the Defence details the division of the potential witnesses per event. It is abundantly clear, even from his analysis, that the number of witnesses Joseph Nzirorera intends to call on the same events, and thus to prove the same facts, is excessive.

14. Rule 73 *ter* D) prescribes that the Chamber may order the Defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts. In exercising this power, the Chamber has already determined that the Defence should be directed to reduce the number of witnesses it will call. Nevertheless, the Chamber considers that it is currently not in a position to assess the overall necessary


⁶ *Karemera et al.*, Injonction à la défense d'Edouard Karemera de s'expliquer sur les violations d'ordonnances de la Chambre quant à la présentation de sa preuve, issued on 2 July 2008.

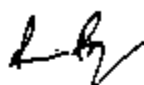
duration of the Joseph Nzirorera's defence case, since the information relevant to such estimation has not been provided, in breach of this Chamber's previous orders and decisions.

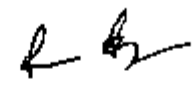
FOR THESE REASONS, THE CHAMBER

- I- **DISMISSES** Joseph Nzirorera's second filing under Rule 73 *ter*.
- II- **ORDERS** Joseph Nzirorera to file as soon as possible, but no later than 13 August 2008, *in er partes*, its final Pre-Defence Brief in compliance with the Rule 73 *ter* B), including in particular his list of witnesses in the intended order of appearance as well as a summary of their respective testimony.
- III- **ADDRESSES**, in application of Rule 46, a warning to the Co- Counsels of Joseph Nzirorera, Peter Robinson and Patrick Nimy Mayidika Ngimbi, for failure to comply with the Chamber's orders.
- IV- **ORDERS** the Registry to file Joseph Nzirorera's third 73 *ter* filing confidentially instead of *ex parte*.

Arusha, 30 July 2008, done in English.


Dennis G.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge
(Absent during signature)


Vagn Joensen
Judge
(Absent during signature)

[Seal of the Tribunal]

