



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:** 4 September 2008

**THE PROSECUTOR**

v.

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

**DECISION ON JOSEPH NZIRORERA'S *EX PARTE* MOTION RE: EXHIBITS DNZ-444-45 AND DNZ-463-66**

*Rule 94bis of the Rules of Procedure and Evidence*

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## INTRODUCTION

1. On 22 July 2008, Joseph Nzirorera filed an *ex parte* motion for an order directing the Registrar to transfer the originals of exhibits DNZ-444, 445, 463, 464, 465, and 466 to a document examiner in the United Kingdom.<sup>1</sup> Although Joseph Nzirorera titled the motion *ex parte*, he expressly requested that Court Management Services (“CMS”) file the motion publicly in an email dated 22 July 2008. The Prosecutor opposes the motion in its entirety,<sup>2</sup> and Nzirorera's co-accused did not file a response.
2. The relevant exhibits were produced by Prosecution Witness BDW during his testimony, and their genuineness became an issue during his testimony. The examiner, Mr. Kim Hughes, has been retained by the Defence, and is under contract with the Registry.
3. On 1 August 2008, the Registry filed a confidential submission under Rule 33(B) of the Rules of Procedure and Evidence concerning Nzirorera's Motion.<sup>3</sup> In its submission, the Registrar expressed its concern about the safety of the exhibits, and suggested that consideration be given to the following options: 1) that certified true copies of the exhibits be made available to the examiner; 2) that the examiner come to Arusha to examine the exhibits in person; or 3) should the options above be found inappropriate, that the exhibits be conveyed to the expert by a Court Officer in order to minimize the risks related to the shipment, and that the Court Officer remain on site during the performance of the document examination to ensure the proper custody of the exhibits.
4. In his response to the Registrar's submission, Joseph Nzirorera stated that he has no problem if the Chamber simply orders the Registrar to make the original exhibits available for inspection at Mr. Hughes' laboratory in the United Kingdom, and leaves it to the Registrar to execute the order in a manner it sees fit.<sup>4</sup> Nzirorera also requested that the Registrar's submission be re-filed as a public document.

## DELIBERATIONS

5. Initially, the Chamber notes that Joseph Nzirorera's motion and all other submissions related to it have been filed publicly. Accordingly, the Chamber considers that all of the

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<sup>1</sup> Joseph Nzirorera's *Ex Parte* Motion Re: Exhibits DNZ-444-45 and DNZ-463-66, filed on 22 July 2008 (“Nzirorera's Motion”); Reply Brief: Joseph Nzirorera's *Ex Parte* Motion Re: Exhibits DNZ-444-45 and DNZ-463-466, filed on 25 July 2008; Reply to Registrar's Submissions: Joseph Nzirorera's *Ex Parte* Motion Re: Exhibits DNZ-444-45 and DNZ-463-66, filed on 4 August 2008.

<sup>2</sup> Prosecutor's Response to Joseph Nzirorera's *Ex Parte* Motion Re: Exhibits DNZ 444-45 and DNZ-463-66, filed on 24 July 2008.

<sup>3</sup> Registry's Submission under Rule 33 (B) of the Rules on Joseph Nzirorera's *Ex Parte* Motion Re: Exhibits DNZ 444-45 and DNZ-463-66 of 22 July 2008, filed on 24 July 2008.

<sup>4</sup> Reply to Registrar's Submissions: Joseph Nzirorera's *Ex Parte* Motion Re: Exhibits DNZ-444-45 and DNZ-463-66, filed on 4 August 2008.

essential facts are in the public domain, and orders the Registry to re-file its submission as a public document.

6. The Prosecution challenges Mr. Hughes' qualifications as an expert witness, and argues that his expertise seems to have been predetermined without considering any submissions from the Prosecution, as required by Rule 94 *bis*, because Mr. Hughes already has a contract with the Registrar. The Chamber notes that Mr. Hughes' expertise has not been predetermined by the Chamber because Joseph Nzirorera has not even decided whether to call him as an expert witness. Nzirorera has stated that he cannot make that decision until Mr. Hughes has conducted his examination on the exhibits in question, and communicated the results to him. Moreover, the Chamber notes that the contract between Mr. Hughes and the Registrar concerns nothing more than legal aid to Nzirorera for the payment of Mr. Hughes' services.

7. Rule 94 *bis* states that the opposing party shall file a notice to the Trial Chamber indicating whether it accepts the witness's qualifications as an expert within fourteen days of filing of the statement of the expert witness. If Joseph Nzirorera decides to call Mr. Hughes as an expert witness, he will disclose Mr. Hughes' statement to the Prosecution, and file it with the Chamber. It is only then that the Prosecution is entitled to make submissions concerning Mr. Hughes' qualifications.

8. The Prosecution also argues that the Chamber ought to consider whether in the course of exercising its judicial functions to assess the credibility of witnesses, and to assess evidence, it needs any assistance from Mr. Hughes, or any other expert, particularly in relation to the documents at issue. The Chamber notes that the forensic examination of documents is a highly technical matter for which it may require an expert opinion.

9. Finally, the Prosecution asserts that Joseph Nzirorera's assurances that Mr. Hughes will keep the originals in a safe place, and that he will not distribute or disseminate them or their copies to anyone, nor reveal the identity of the witness to anyone, fall short of the desirable standard for witness protection and preservation of exhibits. The Registrar concurs with this contention.

10. The Chamber agrees that witness protection and preservation of exhibits are valid concerns anytime original exhibits are handled or transmitted. However, because Joseph Nzirorera claims that Mr. Hughes requires the originals, along with his laboratory equipment, to examine the authenticity of the exhibits in question, the Chamber finds that the originals of the documents must be sent to the United Kingdom for examination. The Chamber is satisfied that Mr. Hughes is capable of keeping the originals in a safe place, and that he will not distribute or disseminate them or their copies to anyone, nor reveal the identity of the witness to anyone.

11. However, the Chamber notes that the original exhibits must be transmitted to Mr. Hughes, and returned to the ICTR, in a manner that ensures their safety and integrity. Accordingly, the Chamber grants Joseph Nzirorera's motion, but leaves it to the Registry to select one of the following options that best satisfies this goal.

The Registry may either: (1) send and return the exhibits via official U.N. pouch to its office at the ICTY, and then via hand-to-hand certified DHL delivery to Mr. Hughes; or (2) hand-deliver the exhibits to Mr. Hughes via a U.N. staff member who will be attending training sessions in United Kingdom, and Mr. Hughes will return them via hand-to-hand certified DHL delivery to the Registry's office at the ICTY, from where they will be sent via official U.N. pouch to the ICTR.

**FOR THESE REASONS, THE CHAMBER**

- I. ORDERS** the Registrar to re-file his submission as a public document;
- II. GRANTS** Joseph Nzirorera's Motion in part;
- III. ORDERS** the Registrar, pursuant to paragraph 11, to send the originals of Exhibits DNZ-444, 445, 463, 464, 465, and 466 to Mr. Hughes' office at an address the Defence for Joseph Nzirorera will communicate to the Registry; and
- IV. ORDERS** Mr. Kim Hughes, pursuant to Rules 54 and 75 of the Rules, to keep the originals in a safe place, and not to distribute or disseminate them or their copies to anyone, nor reveal the identity of the witness to anyone; and to return the documents to the Registry's office at the ICTY in accordance with paragraph 11.

Arusha, 4 September 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge  
(absent during signature)

Judge

[Seal of the Tribunal]