



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:** 8 September 2008

**THE PROSECUTOR**

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION TO RECONSIDER  
THE WARNING ISSUED TO CO-COUNSEL**

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

**Office of the Prosecutor:**  
Don Webster  
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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  
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## INTRODUCTION

1. On 31 July 2008, Joseph Nzirorera filed a Motion moving the Chamber to reconsider the warning issued to his co-Counsel<sup>1</sup> by this Chamber's Decision dated 30 July 2008<sup>2</sup>. Indeed, Joseph Nzirorera's Lead Counsel alleges that the co-Counsel had no responsibility at all in the filings on the presentation of the Defence case made pursuant to Rule 73 *ter* of the Rules of procedure and evidence. He thus moves the Court to reconsider its Decision of 30 July 2008 issuing a warning to the two Defence Counsel. In support of his Motion, Joseph Nzirorera files an affidavit from his Lead Counsel affirming that the co-Counsel has never participated in the preparation, drafting or filing of any pleading<sup>3</sup>. He contends that such affidavit constitutes a new fact.

2. The Prosecutor opposes the Motion<sup>4</sup>.

3. On 6 August 2008, Joseph Nzirorera filed his reply brief<sup>5</sup>.

## DELIBERATIONS

4. The Chamber has the inherent power to reconsider its decisions when: (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; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby warranting the exceptional remedy of reconsideration.<sup>6</sup>

5. The Lead Counsel suggests that he has been acting alone in preparing the requested information under Rule 73 *ter* and that by providing that information to the Chamber through

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<sup>1</sup> Joseph Nzirorera's Motion for Reconsideration of Warning Issued to Co-Counsel, filed on 31 July 2008.

<sup>2</sup> *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera *et al.*"), Order to Joseph Nzirorera on the Presentation of his Defence Evidence (TC), 30 July 2008. Order to Joseph Nzirorera on the Presentation of his Defence Evidence, issued on 30 July 2008.

<sup>3</sup> Annex A to Nzirorera's Motion.

<sup>4</sup> Prosecutor's Response to Joseph Nzirorera's Motion for Reconsideration of Warning Issued to Co-Counsel, filed on 4 August 2008.

<sup>5</sup> Reply Brief: Joseph Nzirorera's Motion for Reconsideration of Warning Issued to Co-Counsel, filed on 6 August 2008.

<sup>6</sup> *Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005, para. 8.

his affidavit, he is also providing a new fact justifying reconsideration of the warning Decision, dated 30 July 2008<sup>7</sup>.

6. The Chamber finds it not necessary to assess if this information constitutes a new fact or not, since in any case, this information does not prevent it from warning Joseph Nzirorera's Defence Counsel for non-compliance with several repeated and consistent Chamber's Orders.<sup>8</sup> In the Chamber's view, pursuant to Rule 44 B), it is the co-Counsel's duty to intervene and make sure that the requested information is filed, especially considering the repetitive character of the order to file that information. Furthermore, the Chamber notes that the information provided in the affidavit is in clear contradiction with Joseph Nzirorera's incomplete 73ter submissions according to which all the Defence team members had made efforts to comply with this repeated Order.<sup>9</sup>

**FOR THESE REASONS, THE CHAMBER DENIES** Joseph Nzirorera's Motion.

Arusha, 8 September 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

<sup>7</sup> *Karemera et al.*, Order to Joseph Nzirorera on the Presentation of his Defence Evidence (TC), 30 July 2008. Order to Joseph Nzirorera on the Presentation of his Defence Evidence, issued on 30 July 2008.

<sup>8</sup> *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), 6 March 2008.

<sup>9</sup> In particular, Joseph Nzirorera's Second Rule 73 ter Filing, filed on 24 April 2008, paras 2, 4, 8, 14, 16, 18, 20; Joseph Nzirorera's Third Rule 73 ter Filing, filed on 2 June 2008, para. 8.