



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
29-09-2008
(37763-37761)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

37763

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 29 September 2008

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THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON MOTION FOR RECONSIDERATION OF DECISION ON JOSEPH
NZIRORERA'S MOTION FOR INSPECTION: MICHEL BAGARAGAZA**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecutor:
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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
Ngimbi

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INTRODUCTION

1. On 10 July 2008, the Chamber ordered the Prosecution to disclose its plea agreement with Michel Bagaragaza to Joseph Nzirorera as soon as it was finalized in open court.¹ However, because those plea negotiations were ultimately unsuccessful,² Nzirorera has requested that the Chamber reconsider its decision, and order immediate disclosure of the plea agreement.³

2. In its response, the Prosecution states that the Chamber should await a decision by Trial Chamber II on Protais Zigiranyirazo's motion to reclassify the plea agreement as a public document before deciding on Nzirorera's Motion, or refer Nzirorera's Motion to that Chamber.⁴ However, the Prosecution also stated that it is willing to disclose the plea agreement if the Chamber orders immediate inspection.⁵

DELIBERATIONS

3. As a preliminary matter, the Chamber notes that the Prosecution's contention that it should await the decision by Trial Chamber II is now moot because that Chamber already has stated that the plea agreement will remain confidential.⁶

4. The Chamber has an inherent power to exercise its discretion and reconsider its decisions, when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original decision; (2) there has been a material change in circumstances since it made its original decision, or (3) 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.⁷ The Chamber

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al."), Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza (TC), 10 July 2008.

² Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza, filed on 28 August 2008, ("Nzirorera's Motion"), para. 5; Prosecutor's Response to Joseph Nzirorera's Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza, filed on 1 September 2008, ("Prosecution Response"), para. 2.

³ Nzirorera's Motion; Reply Brief: Motion for Reconsideration of Decision on Joseph Nzirorera's Motion for Inspection: Michel Bagaragaza, filed on 2 September 2008.

⁴ Prosecution Response.

⁵ *Ibid.*

⁶ *Prosecutor v. Michel Bagaragaza*, Case No. ICTR-2005-86-PT, Decision on Zigiranyirazo's Motion for Directions (TC), filed confidentially on 15 September 2008.

⁷ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-PT ("Karemera et al."), Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses (TC), 29 August 2005, para. 8.

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recalls that it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.⁸

5. The Chamber agrees with Joseph Nzirorera and the Prosecution that the collapse of Michel Bagaragaza's plea negotiations constitutes a new fact, which merits reconsideration of its original decision. The Chamber cannot delay the disclosure of the plea agreement until such time as it is made public, because the collapse of the negotiations has caused the agreement to remain confidential. Accordingly, the Chamber orders the Prosecution to disclose Bagaragaza's plea agreement *inter partes*, and confidentially.

FOR THESE REASONS, THE CHAMBER

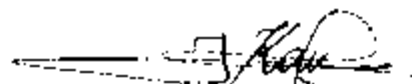
- I. **GRANTS** Joseph Nzirorera's motion; and
- II. **ORDERS** the Prosecution to disclose Michel Bagaragaza's plea agreement *inter partes*, and confidentially.

Arusha, 29 September 2008, done in English.



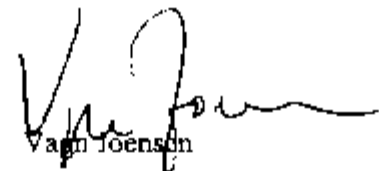
Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagn Joensen

Judge

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⁸ *Karemera et al.*, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions (TC), 8 November 2007.