



UNITED NATIONS
NATIONS UNIES

ICTR-98-111-1
27-10-2008
(38105 - 38102)

38105
Jaw

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 27 October 2008

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

JUDICIAL
INTEGRITY
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**DECISION ON JOSEPH NZIRORERA'S MOTION TO DISMISS FOR ABUSE OF
PROCESS: PAYMENTS TO PROSECUTION WITNESSES AND "REQUETE DE
MATHIEU NGIRUMPATSE EN RETRAIT DE L'ACTE D'ACCUSATION"**

Office of the Prosecutor:
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Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika
Ngimbi

QB

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INTRODUCTION

1. On 6 August 2008, the Chamber found that ICTR payments to Prosecution Witness T went beyond that which is reasonably required for the management of witnesses and victims, and therefore ordered that they be disclosed to the Defence as evidence, which may affect Witness T's credibility under Rule 68 of the Rules of Procedure and Evidence.¹ Joseph Nzirorera now moves the Chamber for an order dismissing the Indictment against him on the grounds that the Prosecution's payments to witnesses who testify against him are excessive, and therefore an abuse of process.²

2. Mathieu Ngirumpatse requests that the Indictment against him be dismissed for the same reasons, and claims that the Chamber should withdraw the testimony of Prosecution Witnesses G and T, and issue an appropriate sanction against the Prosecution.³ The Prosecution opposes both motions in their entirety.⁴

DELIBERATIONS

3. In *Akayesu*, the Appeals Chamber defined abuse of process as something so unfair and wrong that the court should not allow a Prosecutor to proceed with that is in all other respects a regular proceeding.⁵ The burden of showing that there has been an abuse of process rests with the accused, and establishing such abuse will depend on the circumstances of the case.⁶ If an accused claims that an abuse of process has occurred, it is important that he show that he has suffered prejudice.⁷

4. Joseph Nzirorera contends that the payments of what he considers to be huge sums of money to Prosecution witnesses,⁸ in order to allegedly induce them to testify against him, fall squarely within the second category for abuse of process because they are improper and contravene a reasonable court's sense of justice. Nzirorera also asserts that these payments

¹ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("*Karemera et al.*"), Decision on the Full Disclosure of ICTR Payments Made for the Benefit of Witness T (TC), 6 August 2008.

² Joseph Nzirorera's Motion to Dismiss for Abuse of Process: Payments to Prosecution Witnesses, filed on 8 August 2008 ("*Nzirorera's Motion*"); Reply Brief: Joseph Nzirorera's Motion to Dismiss for Abuse of Process: Payments to Prosecution Witnesses, filed on 14 August 2008.

³ *Karemera et al.*, Requête de Mathieu Ngirumpatse en retrait de l'acte d'accusation, filed on 13 August 2008 ("*Ngirumpatse's Motion*").

⁴ Prosecutor's Response to Joseph Nzirorera's Motion to Dismiss for Abuse of Process: Payments to Prosecution Witnesses, filed on 12 August 2008.

⁵ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001, para. 339.

⁶ *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement (AC), 1 June 2001, para. 340.

⁷ *Ibid.*

⁸ In his motion, Joseph Nzirorera also contends that benefits were paid to Omar Serushago and Michel Bagaragaza in connection with their recruitment as potential witnesses in this case.

skew the truth-finding process, and are prejudicial to him, because potential or actual Prosecution witnesses such as T and Michel Bagaragaza initially met freely with his Lead Counsel, and provided exculpatory information, but ceased to do so after they began to receive payments from the Prosecution.

5. The Chamber does not find that the payments were made for the purpose of "inducing" testimony against Joseph Nzirorera, as Nzirorera claims. Instead, these payments and benefits were made as part of a witness protection program, which aims to neutralize the risks that arise from cooperating with the Prosecution, and testifying against the accused. Moreover, Nzirorera has not demonstrated how these benefits have influenced Prosecution witnesses to align their testimony and behavior with the interests of the Prosecution.

6. The loose associations that Joseph Nzirorera draws between cooperation by Prosecution witnesses with him prior to benefits being paid, and their lack of cooperation during the time period after benefits were paid, fall short of proving pre-trial impropriety or misconduct that contravenes the court's sense of justice. The Prosecution witnesses' lack of cooperation with Nzirorera during the time period where they were paid benefits could have arisen for a host of reasons, which Nzirorera has not discounted. Therefore, Nzirorera has not demonstrated that he has suffered prejudice as a result of the payments, and the Chamber does not find that an abuse of process has occurred.

7. Nonetheless, the Chamber recognizes that an unfortunate side-effect of the necessary practice of providing benefits to witnesses who agree to testify for the Prosecution may be that their testimony is sometimes influenced to some degree by such payments. Because the Chamber understands the importance of the integrity of this Tribunal, and endeavours to maintain the fairness of the proceedings against the Accused, it has already recognized that the benefits paid to Witness T go beyond that which is reasonably required for the management of a witness, and that they may affect the credibility of his testimony.⁹ The credibility issues that may be raised by the nature of these payments and benefits will be an integral part of the Chamber's assessment of the weight to be accorded to Witness T's testimony in light of all other relevant factors and other evidence, at the end of the trial.

⁹ *Karemera et al.*, Decision on the Full Disclosure of ICTR Payments Made for the Benefit of Witness T (TC), 6 August 2008, para. 5.




8. Accordingly, the Chamber denies Nzirorera's Motion in its entirety. Because Mathieu Ndirumpatse has presented arguments identical to those of Nzirorera in his motion, the Chamber also denies Ndirumpatse's motion in its entirety.

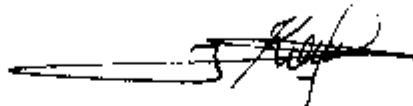
FOR THESE REASONS, THE CHAMBER

DENIES Joseph Nzirorera and Mathieu Ndirumpatse's motions in their entirety.

Arusha 27 October 2008, done in English.

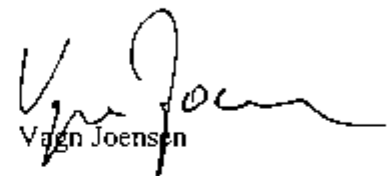

Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagn Joensen

Judge

[Seal of the Tribunal]

