



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
10-11-2008
(38251-38249)

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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: 10 November 2008

JUDICIAL REGISTRY ARCHIVES
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THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S APPLICATION FOR CERTIFICATION
TO APPEAL DECISION ON ELEVENTH RULE 68 MOTION**

Rule 73(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:
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Takeh Sendze

Defence Counsel for Édouard Karemera
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 11 September 2008, the Chamber found that the Prosecution violated Rule 68 of the Rules of Procedure and Evidence when it did not disclose exculpatory testimony from several witnesses to Joseph Nzirorera.¹ Joseph Nzirorera now applies for certification to appeal the Impugned Decision to the extent that it did not provide the remedies he suggested,² including (1) a stay of the proceedings until all Rule 68 material has been disclosed to Mr. Nzirorera; (2) a finding that the Prosecution can no longer be relied upon to discharge its Rule 68 obligations in this case; (3) the appointment of a special master to supervise a comprehensive review of the material in the possession of the Prosecution for exculpatory material; and (4) a resumption of the trial only after the special master has certified that all exculpatory material in the possession of the Prosecution has been disclosed.
2. The Prosecution opposes the motion.³

DELIBERATIONS

3. Rule 73(B) provides that leave for an interlocutory appeal may be granted when the applicant demonstrates that the following two conditions are met: 1) the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and 2) an immediate resolution by the Appeals Chamber – in the view of the Trial Chamber – may materially advance the proceedings. A Trial Chamber may grant certification to appeal a decision in its entirety or limit the certification to part of the decision, or to one or more particular issues in the decision.
4. Certification has been granted where a decision may concern the admissibility of broad categories of evidence, or where it determines particularly crucial matters of procedure or evidence.⁴ The Appeals Chamber has repeatedly emphasized the primacy of Trial

¹ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T (“*Karemera et al.*”), Decision on Joseph Nzirorera’s Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings (TC), 11 September 2008 (“Impugned Decision”).

² Joseph Nzirorera’s Application for Certification to Appeal Decision on Eleventh Rule 68 Motion, filed on 15 September 2008; Reply Brief: Joseph Nzirorera’s Application for Certification to Appeal Decision on Eleventh Rule 68 Motion, filed on 25 September 2008.

³ Prosecutor’s Response to Nzirorera’s Application for Certification to Appeal the Trial Chamber III Decision on his Eleventh Notice of Rule 68 Violations in Relation to Sanctions, filed on 22 September 2008.

⁴ *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jerome-Clement Bicamumpaka, and Prosper Mugiraneza*, Case No. ICTR-99-50-T. Decision on the Prosecutor’s Motion for Certification to Appeal the Trial Chamber’s Decisions on Protection of Defence Witnesses (TC), filed on 28 September 2005, para. 3.

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Chamber rulings involving an exercise of discretion, insisting that interlocutory appeals under Rule 73(B) are only warranted in exceptional circumstances.⁵

5. Joseph Nzirorera first contends that the issue of the remedy for repeated violations of Rule 68 is one which significantly affects the fair conduct of the proceedings and the outcome of the trial. The Chamber agrees that the issue of whether to provide a remedy for Rule 68 violations may affect the fair and expeditious conduct of the proceedings and the outcome of the trial, generally speaking. However, the remedies at issue do not concern the prejudice Nzirorera has suffered as a result of the disclosure violations in question, but whether the Prosecution can be relied on to carry out its disclosure obligations in the future, in accordance with the Rules of Procedure and Evidence and the standards set by the Chamber. Accordingly, the Chamber does not find that the specific remedies requested by Nzirorera are appropriate issues to be certified for the Appeals Chamber for resolution.

6. In relation to the second prong, the Chamber further notes that the remedies at issue, if granted, would have delayed the proceedings rather than advancing them.

FOR THESE REASONS, THE CHAMBER

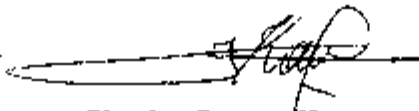
DENIES Joseph Nzirorera's motion in its entirety.

Arusha, 10 November 2008, done in English.



Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagn Joensen

Judge



⁵ *Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva, ("Bagosora et al.")* Decision on Kabiligi Application for Certification concerning Defence Cross examination after Prosecution Cross Examination (AC), 2 December 2005, para. 5.