

ICTR-98-44-T

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(38527-38525)

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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 December 2008

JUDICIAL RECORDS 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 20TH NOTICE OF VIOLATION OF RULE
66 AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES: COLONEL
FELICIEN MUBERUKA**

Rule 66(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 30 October 2008, Joseph Nzirorera filed a motion claiming that the Prosecution violated Rule 66(B) of the Rules of Procedure and Evidence because it did not disclose information obtained from Colonel Felicien Muberuka during two Prosecution interviews.¹ He moves for immediate disclosure of that information and for remedial and punitive sanctions. The Prosecution opposes the motion in its entirety.²

DELIBERATIONS

2. Under Rule 66(B), the Prosecutor shall, at the request of the Defence, permit the Defence to inspect any books, documents, photographs, and tangible objects in his custody or control, which are material to the preparation of the defence. All statements, immigration documents, or other judicial documents for persons listed as witnesses, which are in the possession of the Prosecution, are subject to inspection under Rule 66(B) if they contribute to the decision to call those witnesses.³

3. On 31 July 2008, Joseph Nzirorera moved, pursuant to Rule 66(B) of the Rules of Procedure and Evidence, for inspection of:

All statements in the possession of the OTP, as well as all immigration documents or other judicial documents for the persons who are listed as potential witnesses for Joseph Nzirorera in his *Third Rule 73 ter Filing* disclosed to the Prosecution by the Trial Chamber on 30 July 2008.⁴

The Chamber granted the motion on 22 August 2008.

4. Joseph Nzirorera now contends that the Prosecution has violated Rule 66(B), along with the Chamber's Order of 22 August 2008, because Felicien Muberuka was listed as a potential witness in his third Rule 73 *ter* filing, and the Prosecution did not disclose information to him from two Prosecution interviews with Muberuka that have already taken place. The Chamber notes that Nzirorera has misrepresented the content of his third Rule 73 *ter* filing because it does not list Muberuka as a potential witness. Therefore, the Prosecution has not violated the Chamber's 22 August 2008 order.

5. Moreover, Rule 66(B) clearly states that the Defence must initiate requests for inspection under Rule 66(B). Joseph Nzirorera has not shown that he has requested the Prosecution or the Chamber to grant him permission to inspect documents specifically related to Felicien Muberuka under Rule 66(B). Accordingly, the Chamber concludes that the

¹ Joseph Nzirorera's 20th Notice of Violation of Rule 66 and Motion for Remedial and Punitive Measures: Colonel Felicien Muberuka, filed on 30 October 2008, ("Nzirorera's Motion"); Reply Brief: Joseph Nzirorera's 20th Notice of Violation of Rule 66 and Motion for Remedial and Punitive Measures: Colonel Felicien Muberuka, filed on 4 November 2008, ("Nzirorera's Reply").

² Prosecutor's Response to Joseph Nzirorera's 20th Notice of Violation of Rule 66 and Motion for Remedial and Punitive Measures: Colonel Felicien Muberuka, filed on 4 November 2008.

³ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al."), Décision relative à la requête principale de Joseph Nzirorera en communication, par le Procureur, d'informations sur les témoins de la Défense à laquelle s'est joint Édouard Karemera, filed on 17 April 2008.

⁴ Joseph Nzirorera's Fourth Motion for Inspection of Defence Witness Information, filed on 31 July 2008.

Prosecution has not violated Rule 66(B) concerning information received from Muberuka during the two Prosecution interviews.

6. Furthermore, the Chamber notes with concern that Joseph Nzirorera has also misrepresented the Prosecution's position concerning Rule 66(B) inspections. In his motion, Nzirorera states that the Prosecution represented that it would complete its Rule 66(B) disclosure obligations by 27 October 2008.⁵ This is incorrect. The Prosecution actually stated that it would *substantially complete* its Rule 66(B) disclosure obligations by 27 October 2008.⁶


7. Because the Prosecution's efforts to comply with Rule 66(B) are still ongoing, and it does not oppose its obligations under that Rule, the Chamber finds that Nzirorera should have contacted the Prosecution directly to inquire whether it had completed a search for information regarding Felicien Muberuka, instead of filing a motion with the Chamber first. For the reasons stated above, the Chamber finds that Joseph Nzirorera's motion is both frivolous and premature.

8. Because Joseph Nzirorera has only presented what Felicien Muberuka claims to have told the Prosecution during the two interviews, the Chamber will not address his submission that the Prosecution has "perhaps" violated Rule 68.

FOR THESE REASONS, THE CHAMBER

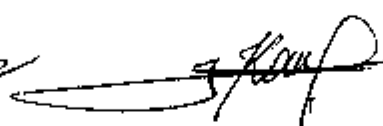
- I. **DENIES** Joseph Nzirorera's motion in its entirety; and
- II. **DIRECTS** the Registry to deny Nzirorera's counsel any fees associated with the filing of this motion.

Arusha, 4 December 2008, done in English.



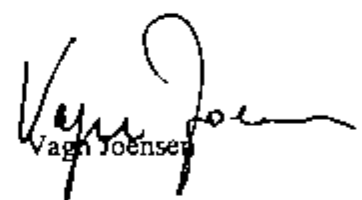
Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagh Joensen

Judge

[Seal of the Tribunal]



⁵ Nzirorera's Motion, para. 4.

⁶ Prosecutor's Motion for an Order Pursuant to Rule 54 and Rule 73ter(D) to Reduce the Number of Witnesses being Called by Joseph Nzirorera, filed on 20 October 2008, fn. 4.