



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
13-2-2009
(45057 - 45055)

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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: 13 February 2009

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THE PROSECUTION

v.

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

**DECISION ON JOSEPH NZIRORERA'S 22ND NOTICE OF RULE 66 VIOLATION
AND MOTION FOR REMEDIAL MEASURES: PAUL BISENGIMANA**

Rule 66 of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
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 26 January 2009, Joseph Nzirorera filed a motion claiming that the Prosecution violated Rule 66(B) and possibly Rule 68 of the Rules of Procedure and Evidence by failing to disclose a letter dated 1 December 2008 from Paul Bisengimana ("Letter").¹ Bisengimana has been convicted by this Tribunal and is currently imprisoned in the United Nations Detention Facility in Arusha. Nzirorera bases his assertion that the Prosecution received the Letter solely on the fact that the Prosecution is included among a list of individuals to be copied at the bottom of the Letter.²

2. In response, the Prosecution denies having ever received the Letter.³ In light of the Response, Joseph Nzirorera concedes that there would be no disclosure violation if indeed the Letter was not delivered to the Prosecution. He therefore requests that the Chamber invite the Registrar to make submissions concerning the delivery of the Letter.⁴

DELIBERATIONS

3. The Chamber notes that, when alleging a violation of either Rule 66(B) or Rule 68, an applicant must demonstrate that the information sought is in the custody and control of the Prosecution.⁵

4. The Chamber finds that there is no basis to support an inference that the Letter is in the custody of the Prosecution. The Prosecution submits, after making inquiries, that neither it nor the Registry have any record of the Letter.⁶ Joseph Nzirorera provides no basis for the Chamber to conclude otherwise. While the Prosecution may be included among the list of intended recipients, Nzirorera has failed to provide any evidence that the Letter was in fact sent, to anyone. Indeed, Nzirorera concedes that the Letter may not have been sent to the Prosecution at all.⁷

¹ Joseph Nzirorera's 22nd Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Paul Bisengimana, filed 26 January 2006 ("Motion").

² Motion, para. 2.

³ Prosecutor's Response to Joseph Nzirorera's 22nd Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Paul Bisengimana, filed 2 February 2009 ("Response").

⁴ Reply Brief: Joseph Nzirorera's 22nd Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Paul Bisengimana, filed 9 February 2009 ("Reply"), para. 6.

⁵ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Joseph Nzirorera's Motion for Inspection of Statement of Pierre Celestin Mbonankira, 20 September 2007, para. 8; *Karemera et al.*, Decision on Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings, 11 September 2008, para. 6.

⁶ Response, paras. 4-5.

⁷ Reply, para. 6.

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5. The Chamber finds not only that there are no grounds to find that the Prosecution violated Rules 66(B) or 68, but also that the Motion is frivolous. By conceding that the Letter may not have been delivered to the Prosecution, Joseph Nzirorera makes plain that he has no basis for asserting otherwise. There is no suggestion that any effort was made to determine if the Letter was in the possession of the Prosecution, such as simply asking the Prosecution directly. While the Prosecution is expected to comply with its disclosure obligations without prodding by the defence, the Chamber expects parties to have a sound basis for their claims before filing motions which take up the precious resources of the Chamber. When it becomes plain that a motion is baseless, the proper course is to withdraw it.⁸

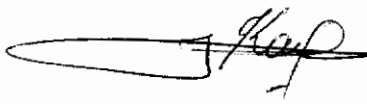
6. In these circumstances, the Chamber finds no basis on which to order the Registry to make submissions in respect of this matter. The Chamber also finds that fees related to the Motion should be denied and directs the Registrar accordingly.

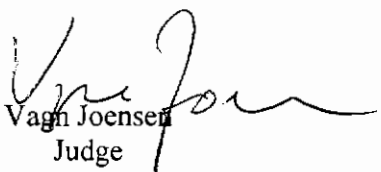
FOR THESE REASONS, THE CHAMBER

- I. **DENIES** Joseph Nzirorera's Motion in its entirety; and,
- II. **DIRECTS** the Registrar to deny counsel for Joseph Nzirorera all fees with respect to the Motion.

Ausha, x February 2009, done in English.


 Dennis C. M. Byron
 Presiding Judge


 Gberdao Gustave Kam
 Judge


 Vagn Joensen
 Judge



⁸ Such a practice would of course enable the Chamber to adjudicate the pending motions more efficiently, an issue which counsel for Joseph Nzirorera commented on at the last Status Conference: T. 9 February 2009, p. 7.