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**International Criminal Tribunal for Rwanda**  
**Tribunal pénal international pour le Rwanda**

UNITED NATIONS  
NATIONS UNIES

OR: ENG

### TRIAL CHAMBER III

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

**Registrar:** Adama Dieng

**Date:** 18 February 2009

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W. J. Starn

## THE PROSECUTION

**V.**

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

## DECISION ON JOSEPH NZIRORERA’S APPLICATION FOR CERTIFICATION TO APPEAL DECISION ON MUDAHINYUKA DISCLOSURE

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

**Office of the Prosecution:**  
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Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Matthieu Ngrumpatse  
Chantal Hounkpatin and Frédéric Weyl**

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

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## INTRODUCTION

1. On 6 October 2008, Joseph Nzirorera filed a motion claiming that the Prosecution violated Rule 66(B) and possibly Rule 68 of the Rules of Procedure and Evidence because it did not disclose information purportedly obtained from Jean-Marie Vianney Mudahinyuka.<sup>1</sup> The Chamber held that, in light of representations made by the Prosecution that it obtained no evidence subject to disclosure under either Rule 66 or Rule 68 during meetings with Mudahinyuka, Nzirorera had not established that the Prosecution possessed such information and, as a result, that there was no violation of either Rule 66 or Rule 68.<sup>2</sup>
2. Joseph Nzirorera seeks certification to appeal the Impugned Decision.<sup>3</sup> Nzirorera contends that the Chamber erred by holding, in effect, that the Prosecution has no obligation to record exculpatory information.<sup>4</sup>

## DELIBERATIONS

3. Rule 73(B) provides that leave for an interlocutory appeal may be granted only where the "decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings." Certification is granted to appeal issues that have been *decided* by the Chamber, not questions that may be impliedly raised by a decision or dicta.<sup>5</sup>

<sup>1</sup> Joseph Nzirorera's 19<sup>th</sup> Notice of Violation of Rule 66 and Motion for Remedial and Punitive Measures: Jean-Marie Vianney Mudahinyuka, filed 6 October 2008.

<sup>2</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's 19<sup>th</sup> Notice of Violation of Rule 66 and Motion for Remedial and Punitive Measures: Jean-Marie Mudahinyuka, 9 February 2009 ("Impugned Decision").

<sup>3</sup> Joseph Nzirorera's Application for Certification to Appeal Decision on Mudahinyuka Disclosure, filed 16 February 2009 ("Motion").


<sup>4</sup> Motion, paras. 1 and 8.

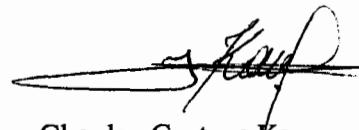
<sup>5</sup> *Karemera, et al.*, Decision on Joseph Nzirorera's Application for Certification to Appeal Decision on Tenth Rule 68 Motion, 4 March 2008, para. 3; *Karemera, et al.*, Decision on Joseph Nzirorera's Application for Certification to Appeal Issue of Prosecution's Obligation to Record Exculpatory Information, 26 November 2007, para. 4.


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4. The Chamber recalls that the Impugned Decision did not address the issue of whether the Prosecution is under a positive obligation to record exculpatory information; indeed, the Chamber was not asked to do so by the parties. Without any discussion or finding on this issue in the Impugned Decision, the Chamber finds that this matter is inadequate for reference to the Appeals Chamber.

Arusha, 18 February 2009, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

