



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
27-02-2009
(45246-45242)

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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: 27 February 2009

THE PROSECUTION

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVE
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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION OF 2
DECEMBER 2008 DECISION**

Rules 46, 54, 71(D), 73ter 90 and 92bis 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

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1. On 9 December 2008, Joseph Nzirorera moved the Chamber to reconsider its Decision dated 2 December 2008, in which it adjudicated on nine motions.¹ It dismissed the Prosecution's Motion for Reduction of Nzirorera's Witness List as well as Nzirorera's Motions for Reconsideration of its 24 October 2008 Order, Extension of Time, Video-Link, Subpoenas, and ordered sanctions against Lead Counsel for Nzirorera.² Nzirorera contends that the Chamber should re-assess whether the sanctions were appropriate since he claims the sanctions imposed upon his Lead Counsel were premised on factual and legal errors in the principal criteria used by the Chamber to reach its decision.³ The Prosecution opposes the motion.⁴

DELIBERATIONS

2. The Chamber has the inherent power to reconsider its decisions when: (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice thereby

¹ Prosecutor's Motion for an Order Pursuant to Rule 54 and 73ter(D) to Reduce the Number of Witnesses being called by Joseph Nzirorera, filed on 20 October 2008 ("Motion for Reduction of Nzirorera's Witness List"); Joseph Nzirorera's Motion for Extension of Time to Reply to Prosecutor's Motion for Reduction of Nzirorera's Witness List, filed on 23 October 2008 ("Motion for Extension of Time"); *Karemera et al.*, Order to Joseph Nzirorera to Reduce his Witness List (TC), 24 October 2008 ("24 October 2008 Order"); Joseph Nzirorera's Motion for Testimony by Video-link [Name redacted], filed on 13 October 2008 ("Motion for Video-link"); Joseph Nzirorera's Motion for Subpoena to Pascal Ntawumenyumunsi, filed on 17 November 2008 ("Motion to Subpoena Ntawumenyumunsi"); Joseph Nzirorera's Motion for Subpoena to Eugène Mbarushimana, filed on 13 October 2008, Joseph Nzirorera's Motion for Subpoena to Faustin Twagiramungu, filed on 16 October 2008, Joseph Nzirorera's Motion for Subpoena to Fabien Bunani, filed on 22 September 2008 ("Pre-24 October 2008 Subpoena Applications").

² *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-T, ("Karemera et al.")*, Decision on Joseph Nzirorera's Motions for Reconsideration of 24 October 2008 Order, for Extension of Time, Subpoenas and Video-Link and on Prosecution's Motion for an Order to Nzirorera to Reduce His Witness List, 2 December 2008 ("2 December 2008 Decision").

³ Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision, filed on 9 Dec 2008, ("Nzirorera's Motion"); Reply Brief: Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision, filed on 19 December 2008, ("Nzirorera's Reply").

⁴ Prosecutor's Response To: Nzirorera's Motion for Reconsideration of 2 December 2008 Decision, filed on 15 December 2008, ("Prosecution Response") para. 18.

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warranting the exceptional remedy of reconsideration.⁵ Nzirorera's motion does not meet any of these criteria.

3. Joseph Nzirorera alleges that the Chamber based its finding that his Motion for Extension of Time was moot and abusive of the process on misinformation, namely that the motion was filed after the 24 October 2008 Order was issued. Review shows that the filing occurred the day before the order was issued and was served upon the parties some three days later due to no fault of the applicant. However, the determination was based upon the history of inordinate delay and Rule 73*ter* violations related to his witness list. The Chamber therefore does not consider this a new fact which warrants a reconsideration of its decision.

4. Additionally, the complaint that the Chamber was wrong to consider it abusive of process to apply for reconsideration after certification to appeal was granted is frivolous. The Chamber considers it necessary to reemphasise that filing of the Motion to Reconsider the 24 October 2008 Order on the due date set by that Order for the Rule 92*bis* filing was vexatious in that the effect of this was to further delay compliance with its orders.

5. Similarly, the complaint that it was wrong to dismiss the application for issuing a subpoena for a particular witness prior to compliance with the Order to file the witness list is frivolous.⁶

6. Next, Joseph Nzirorera's complaint that the Chamber erred in concluding that his filings related to Rule 92*bis* abusively exploited the remuneration system is not supported by

⁵ *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Reconsider the Warning Issued to Co-Counsel (TC), 8 September 2008, para. 4; See also: *The Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-AR72, Decision (Motion for Review or Reconsideration) (AC), 12 September 2000; *Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva ("Bagasora et. al.") v. The Prosecutor*, Case No. ICTR-98-41-A, Appeals Chamber, Interlocutory Appeal from refusal to Reconsider Decisions relating to Protective Measures and Application for a Declaration of "Lack of Jurisdiction" (AC), 2 May 2002, para. 10; See also *The Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landzo ("Mucić et. al.")*, Case No. IT-96-21-A, Decision on Hazim Delić's Emergency Motion to Reconsider Denial of Request of Provisional Release (AC), 1 June 1999, para. 4.

⁶ The individual application for subpoena that was filed after the 24 October 2008 Order was considered to be abusive of the process. The Chamber was similarly unable to assess any of the Pre-24 October 2008 Subpoena Applications until it had received Nzirorera's witness lists.

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any new facts. There is no information provided which could support reconsideration or review of that finding of fact.

Sanctions pursuant to Rule 46

7. Joseph Nzirorera contends that reporting to his Lead Counsel's State Bar Association is disproportionate and unfair. He claims that by filing his reduced Rule 73*ter* witness list and omnibus Rule 92*bis* motion on 8 December 2008, he is now in compliance with the orders of the Chamber, and the proposed sanctions have already had the intended effect.⁷ In the Chamber's view this fact, if accurate, would demonstrate the effectiveness of its order rather than be a basis for setting it aside.

8. However, and in any event, the Chamber considers that this motion is itself frivolous suggesting that the desired lessons have not been learnt. The continued abuse of the process has adverse impact on the Chamber's management of the trial. The Chamber considers that imposition of additional sanctions is required. It therefore directs that the Registrar deny payment of fees related to this motion and fine counsel for Nzirorera the equivalent sum of the fees that would have been earned for this motion was it not an abuse of the process.

⁷ Nzirorera's Motion, para. 34.


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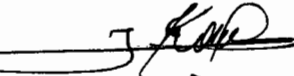
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FOR THESE REASONS, THE CHAMBER

- I. DENIES** Joseph Nzirorera's motion for reconsideration in its entirety.
- II. DIRECTS** the Registrar to deny payment to counsel for Joseph Nzirorera of all fees related to the filing of this motion and in addition to fine him the equivalent sum.
- III. RENEWS ITS INSTRUCTIONS** to the Registry to liaise with the Vice-president regarding notification of the misconduct of Lead Counsel Peter Robinson to the professional body regulating the conduct of counsel in his State of admission.

Arusha, 27 February 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

