



UNITED NATIONS  
NATIONS UNIES

ICTR-07-91-T  
12-03-2009  
(3302-3299)

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

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Khalida Rachid Khan, presiding  
Lee Gacuiga Muthoga  
Aydin Sefa Akay

**Registrar:** Mr. Adama Dieng

**Date:** 12 March 2009

**THE PROSECUTOR**

v.

**Léonidas NSHOGOZA**

**Case No. ICTR-07-91-T**

JUDICIAL RECORDS ARCHIVE  
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**FURTHER ORDER FOR THE DEFENCE TO COMPLY WITH THE CHAMBER'S  
ORDERS AND FILE ITS REDUCED LIST OF WITNESSES**

*Rules 54 and 73 ter (D) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Richard Karegyesa  
Abdoulaye Seye  
Dennis Mabura  
Marie Ka

**For the Accused:**

Allison Turner

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“Tribunal”),

**SITTING** as Trial Chamber III, composed of Judges Khalida Rachid Khan, Lee Gacuiga Muthoga, and Aydin Sefa Akay (“Chamber”),

**RECALLING**

- the Chamber’s Order of 12 February 2009 for the Defence to reduce the number of witnesses it intends to call to testify;<sup>1</sup>
- the Chamber’s Order of 17 February 2009 for the Defence to further reduce its witness list not later than 18 February 2009;
- the Chamber’s Oral Order of 19 February 2009 for the Defence to file such list as ordered not later than 20 February 2009;<sup>2</sup>
- the Chamber’s Order of 23 February 2009 for the Defence to file a list of not more than ten witnesses, in addition to the Accused, who may give oral testimony;<sup>3</sup> and
- the Chamber’s Decision of 26 February 2009 denying the Defence Motion for reconsideration, and ordering the Defence to comply with the Chamber’s 23 February Order;<sup>4</sup>
- the Chamber’s Order of 3 March 2009 in which the Chamber ordered the Defence to comply with the Chamber’s Orders and file its reduced list of witnesses and in which the Chamber warned Defence Counsel of the possibility of sanctions for non-compliance;<sup>5</sup> and
- the Chamber’s Oral Order of 9 March 2009 for the Defence to file its reduced list of witnesses by 4:00 p.m. that day;<sup>6</sup> (“Orders”)

**CONSIDERING** the Defence’s failure to comply with the Chamber’s Orders, and the Chambers Decision of 11 March 2009 imposing sanctions on Defence Counsel pursuant to Rule 46 of the Rules for failure to comply with the Chamber’s Orders;<sup>7</sup>

**CONSIDERING FURTHER** Defence Counsel’s oral submissions on 9 March 2009 and her written submissions filed on 9 March 2009 that she cannot comply with the directions of the Chamber because her client has instructed her not to reduce the witness list;<sup>8</sup>

**NOTING** the Code of Professional Conduct for Defence Counsel (“Code”) which states that Counsel “have an overriding duty to defend their client’s interests, to the extent that they can

<sup>1</sup> *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-T, *Ex Parte* Order for the Defence to Reduce its List of Witnesses 12 February 2009.

<sup>2</sup> *Nshogoza*, *Ex Parte* Order for the Defence to Further Reduce its List of Witnesses, 17 February 2009; Record of Proceedings, 19 February, 2009.

<sup>3</sup> *Nshogoza*, Further Order for the Defence to Reduce its List of Witnesses, 23 February 2009.

<sup>4</sup> *Nshogoza*, Decision on Defence Motion for Reconsideration of the Chamber’s Further Order for the Defence to Reduce its Witness List, 26 February 2009.

<sup>5</sup> *Nshogoza*, Order for the Defence to Comply with the Chamber’s Order of 23 February 2009 and Decision of 26 February 2009 for the Defence to Reduce its List of Witnesses, 3 March 2009.

<sup>6</sup> T. 9 March 2009.

<sup>7</sup> *Nshogoza*, Decision to Sanction the Defence for Failure to Comply with the Chamber’s Orders, 11 March 2009.

<sup>8</sup> T. 9 March 2009, pp. 9-12; *Nshogoza*, “Defence Submissions Further to the Trial Chamber’s Oral Order of 9 March 2009,” filed 9 March 2009



do so without acting dishonestly or by improperly prejudicing the administration of justice”;<sup>9</sup> and that Counsel must “[a]bide by a client’s decision concerning the objectives of representation if not inconsistent with Counsel’s ethical duties;”<sup>10</sup>

**NOTING FURTHER** that Article 12 of the Code that Counsel “must at all times comply with the Rules and such rulings as to conduct and procedure as may be applied by the Tribunal in its proceedings” and “must at all times have regard to the fair conduct of the proceedings;” and that, according to the Code, it is professional misconduct for counsel to “engage in conduct which is prejudicial to the proper administration of justice before the Tribunal;”<sup>11</sup>

**CONSIDERING** Article 19 (1) of the Statute of the Tribunal which provides for a fair and expeditious trial with full respect for the rights of the Accused and due regard for the protection of victims and witnesses in accordance with the Rules;

**CONSIDERING** that the proceedings were adjourned on 9 March 2009 as a result of the Defence failure to file its reduced list of witnesses, and again on 11 March 2009 as a result of Defence Counsel’s refusal to call her witnesses and proceed with the Defence case;<sup>12</sup>

**CONSIDERING FURTHER** that Defence Counsel has yet to comply with the Chamber’s Orders and that appropriate action will be taken in accordance with the Statute and the Rules if Defence Counsel continues to fail to comply;<sup>13</sup>

**NOTING** that Rule 54 of the Rules allows the Chamber to issue such orders as may be necessary for the preparation or conduct of the trial; and that Rule 73 *ter* (D) allows the Chamber to order the Defence to reduce the number of witnesses it intends to call to testify if it considers that an excessive number of witnesses are being called to prove the same facts;

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<sup>9</sup> Code of Professional Conduct for Defence Counsel (“Code”), Introduction, para. 3.

<sup>10</sup> Code, Article 4.

<sup>11</sup> Code, Article 20 (d).

<sup>12</sup> T. 9 March 2009; T. 11 March 2009.

<sup>13</sup> Rule 46 (A) provides that the Chamber may, “after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice,” and Rule 46 (C) states that “[i]f a counsel assigned pursuant to Rule 45 is sanctioned in accordance with Sub-Rule (A) by being refused audience, the Chamber shall instruct the Registrar to replace the counsel.”

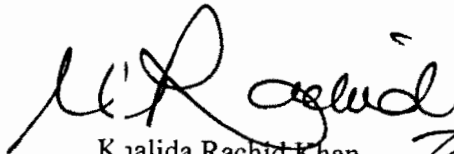


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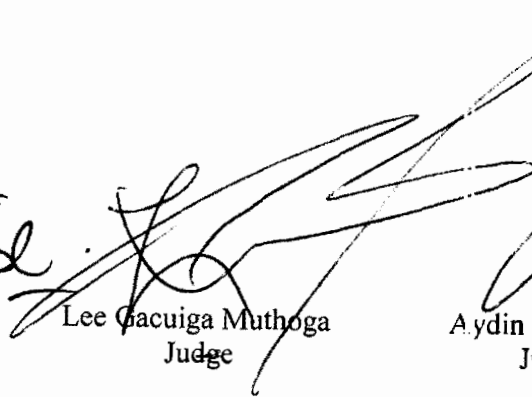
**THE CHAMBER HEREBY**

**ORDERS** the Defence, pursuant to Rules 54 of the Rules, to file the requisite list of witnesses, as repeatedly ordered by the Chamber, no later than 11:00 am on Friday, 13 March 2009, with a view to resuming the proceedings on Monday 16 March 2009; in default of which, the case will stand adjourned *sine die*.

Arusha 12 March 2009



Khalida Rachid Khan  
Presiding Judge



Lee Gacuiya Muthoga  
Judge



Aydin Sefa Akay  
Judge

