



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
26-03-2009
(45459-45455)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

45459

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OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 26 March 2009

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THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR VARIATION OF
DECISION REQUIRING IDENTIFYING INFORMATION**

Rule 54 of the Rules of Procedure and Evidence

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Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. On 17 February 2009, the Chamber ordered Joseph Nzirorera to provide specific identifying information for all of his witnesses within 7 days.¹ Nzirorera now moves for a variation of the 17 February Decision, submitting in essence that he has run into difficulties complying with the Chamber's order.² The Prosecution opposes the Motion in its entirety.³

DELIBERATIONS

2. Although Joseph Nzirorera has not cited any legal authority for his request for a variation of the 17 February Decision, the Chamber finds that it has the inherent power to vary its own decisions, just as it has the power to reconsider them. At the very least, however, a party must demonstrate compelling reasons for such relief.⁴

3. With respect to his 57 *viva voce* witnesses, Joseph Nzirorera submits that he has substantially complied with the 17 February Decision.⁵ Nzirorera states that because the information required by the Chamber is in excess of that required by the Witness and Victims Support Section ("WVSS"), he did not previously collect the required information. Therefore, he was only able to file personal identification sheets for 36 witnesses, which contain "most of" the information required by the Chamber.⁶

4. Joseph Nzirorera did not provide identifying information for those witnesses who are detainees of the Tribunal, since WVSS does not require such information, and given that the Prosecution presumably has access to the information it requires. Should the Chamber require Nzirorera to provide information regarding the detainees, it will take 30 days and \$7,000.00 to do so.⁷

5. Further, 29 of the witnesses have already testified before the Tribunal and therefore personal information sheets already exist for those witnesses.⁸ Of the remaining 28, Joseph

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on the Prosecutor's Notice of Deficiencies in Joseph Nzirorera's Rule 73ter Filings and Motion for Remedial Measures, 17 February 2009 ("17 February Decision").

² Joseph Nzirorera's Motion for Variation of Decision Requiring Identifying Information, filed 23 February 2009 ("Motion").

³ Prosecutor's Response to Joseph Nzirorera's Motion for Variation of Decision Requiring Identifying Information, filed 2 March 2009 ("Prosecution Response").

⁴ See *The Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50, Decision on Prosper Mugiraneza's Extremely Urgent Motion to Vary Conditions of Interview with Jean Kambanda, 19 January 2005, para. 6.

⁵ Motion, paras. 9 and 17.

⁶ Motion, paras. 4-5; See Confidential Annex "B": Joseph Nzirorera's Motion for Variation of Decision Requiring Identifying Information, filed 23 February 2009.

⁷ Motion, para. 6.

⁸ Motion, para. 8.

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Nzirorera submits that the Prosecution has access to the necessary information through other means.⁹ Finally, Nzirorera also states that his defence team is fully committed to provide whatever information it can to resolve any difficulties that may be encountered by the Prosecution in identifying any of his witnesses.¹⁰

6. The Prosecution submits that Joseph Nzirorera has not provided information which is sufficiently detailed to enable it to undertake its investigations. Further, the information that may be available in the records of the Tribunal may be insufficient for its purposes.¹¹ Finally, complete identifying information for all witnesses, without distinction, is necessary so that all parties may investigate them appropriately.¹²

7. The Chamber recalls that Édouard Karemera was required to provide full identifying information for all of his witnesses prior to the commencement of his defence;¹³ information that is routinely required by Chambers in this Tribunal.¹⁴ Joseph Nzirorera should have been well aware that the same identifying information would be required of him. The Chamber does not accept his explanation that he only collected the information required by WVSS, given that he has effectively been on notice of the Chamber's requirements for nearly a year. Further, the information required by WVSS is for a different purpose than that required by the Chamber; all of the parties to the proceedings require identifying information with respect to witnesses in order to conduct investigations and prepare for effective cross-examination.

8. The Chamber finds it difficult to understand how Joseph Nzirorera was not able to provide any information whatsoever concerning 21 of his own *viva voce* witnesses. The Chamber notes that much of the information Nzirorera was ordered to provide, but did not, is basic, such as full name, nationality, sex and current country and city of residence. Nor is the Chamber convinced that there is any reason to distinguish between the witnesses with respect to their status as detainees or as previous witnesses. In these circumstances, the information

⁹ Motion, para. 8.

¹⁰ Motion, para. 9.

¹¹ Prosecution Response, para. 6.

¹² Prosecution Response, para. 8.

¹³ *Karemera et al.*, Decision on Prosecutor's Submission Concerning Édouard Karemera's Compliance with Rule 73ter and Chamber's Orders, 2 April 2008, paras. 7-8.

¹⁴ *The Prosecution v. Ndindiliyimana et al.*, Case No. ICTR-2000-56-T, Decision on Prosecutor's Extremely Urgent Motion for Disclosure of Further Identifying Information Relating to Defence Witnesses, 17 April 2007; *The Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Prosecutor's Motion for Disclosure of Identifying Information Concerning Defence Witnesses Pursuant to Rules 69(c) and 73ter, 9 November 2005; *The Prosecutor v. Bogosora et al.*, Case No. ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005.



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provided by Nzirorera cannot be viewed as in substantial compliance with the 17 February Decision.

9. The Chamber notes that, in response to the Prosecution's motion which led to the 17 February Decision, Joseph Nzirorera agreed to provide the full information required by the Chamber well before each witness testifies.¹⁵ Nzirorera has not provided compelling reasons why he is now unable to do so, other than the cost and time involved. However, such work should have been undertaken well before this stage of the trial and the Chamber does not find that sufficient reasons have been advanced to justify those estimates. The Chamber finds that Nzirorera must comply with the 17 February Decision and provide full identifying information with respect to each of his *viva voce* witnesses within 7 days of this decision. Nzirorera is further reminded to provide sufficient detail so as to enable the parties to undertake meaningful investigations.

10. With respect to the Rule 92*bis* witnesses, the Chamber finds that the matter is best considered with Joseph Nzirorera's pending motion under that Rule.¹⁶

11. Finally, with respect to the Prosecution's submission that Joseph Nzirorera has not yet provided WVSS with complete identifying information for all of his proposed witnesses,¹⁷ the Chamber finds that it would be assisted by further information on the matter. The Chamber therefore requests that WVSS file submissions regarding the identifying information provided by Nzirorera with respect to his witnesses within 7 days of this decision.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. **DENIES** Joseph Nzirorera's Motion, in part;
- II. **ORDERS** Joseph Nzirorera to comply with the 17 February Decision and provide, within 7 days of the date this decision, full identifying information with respect to each of his *viva voce* witnesses;

¹⁵ Joseph Nzirorera's Response to Prosecution Notice of Deficiencies, filed 9 February 2009, para. 5.

¹⁶ See Joseph Nzirorera's Omnibus Motion for Admission of Written Statements and Testimony, filed 8 December 2008.

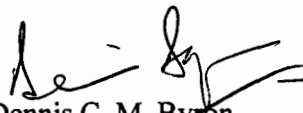
¹⁷ Prosecution Response, para. 13.

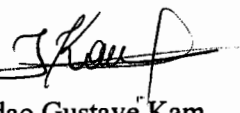


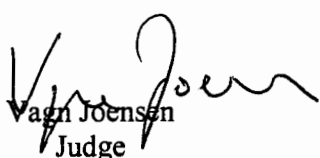
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- III. **FINDS** that Joseph Nzirorera's Motion with respect to his Rule 92bis witnesses should be considered with Nzirorera's pending motion under that Rule; and,
- IV. **REQUESTS** that WVSS file submissions regarding the identifying information provided by Joseph Nzirorera with respect to his witnesses within 7 days of the date of this decision.

Arusha, 26 March 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

