



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
22-04-2009
(45924 - 45921)

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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: 22 April 2009

JUDICIAL RECORDS/ARCHIVES
URIKUMWENIMANA
2009 APR 22 P 2:25
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THE PROSECUTION

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S 21ST NOTICE OF RULE 66 VIOLATION
AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES: THÉOPHILE
URIKUMWENIMANA**

Rule 66 of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
Iain Morley
Saidou N'Dow
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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

[Signature]

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INTRODUCTION

1. On 17 April 2008, the Chamber granted a motion by Joseph Nzirorera requesting inspection of all statements in the possession of the Prosecution with respect Édouard Karemera's witnesses pursuant to Rule 66(B) of the Rules of Procedure and Evidence.¹ On 13 November 2008, Nzirorera brought an oral motion alleging that the Prosecution violated Rule 66(B) by failing to disclose the testimony of Édouard Karemera Witness Théophile Urikumwenimana from the *Muhimana* proceedings.² Nzirorera requested various remedial and punitive measures.³
2. In response, the Prosecution acknowledged that it failed to provide the testimony, but argued that the remedial and punitive measures sought by Joseph Nzirorera were grossly out of proportion to the prejudice suffered.⁴

DELIBERATIONS

3. Rule 66(B) imposes an obligation upon the Prosecution, after receiving a request from the Defence, to allow the Defence to inspect any books, documents, photographs, and tangible objects in its custody or control, which: (1) are material to the preparation of the defence; or (2) are intended for use by the Prosecution as evidence at trial; or (3) were obtained from or belonged to the accused.
4. As acknowledged by the Prosecution⁵ and noted by the Chamber during the proceedings,⁶ the Prosecution failed to meet its obligation under Rule 66(B) and the Inspection Decision to provide Joseph Nzirorera with Théophile Urikumwenimana's testimony from the *Muhimana* proceedings. The outstanding matter to be addressed is whether any remedial or punitive measures are called for.
5. The Chamber recalls that the fact that material has not been disclosed in a timely manner does not *per se* prejudice the accused. The accused must demonstrate that he has

¹ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's Main Motion for Inspection of Defence Witness Information which Édouard Karemera Joined, 17 April 2008 ("Inspection Decision").

² T. 13 November 2008, pp. 32-42.

³ T. 13 November 2008, p. 32.

⁴ T. 13 November 2008, p. 35.

⁵ T. 13 November 2008, p. 34.

⁶ T. 13 November 2008, p. 42.

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suffered material prejudice as a result of the late disclosure in order for remedial and/or punitive measures to be warranted.⁷

6. During the proceedings of 13 November 2008, counsel for Joseph Nzirorera requested permission to meet Théophile Urikumwenimana before starting his cross-examination, which was denied by the Chamber.⁸ Nzirorera further requested that the Prosecution's cross-examination of Urikumwenimana be stricken from the record, for a mistrial to be declared, or a stay of proceedings imposed with the appointment of a special master to oversee disclosure.⁹

7. The Prosecution argued in response that the request to strike its cross-examination of Théophile Urikumwenimana has no reasonable relationship to remedying any prejudice that may have been suffered by Joseph Nzirorera. According to the Prosecution, the rationale underpinning the Inspection Decision was to enable Nzirorera to persuade Édouard Karemera not to call particular witnesses and therefore an appropriate remedy would be to exclude Urikumwenimana's testimony as it relates to Nzirorera.¹⁰

8. After hearing the submissions of the parties, the Chamber held that it should hear the remainder of Théophile Urikumwenimana's testimony in order to better determine what remedies, if any, should be imposed for the Prosecution's violation of Rule 66.¹¹

⁷ *Karemera et al.*, Decision on Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings, 11 September 2008, para. 21.

⁸ T. 13 November 2008, pp. 32 and 42-43.

⁹ T. 13 November 2008, p. 32.

¹⁰ T. 13 November 2008, pp. 36-37.

¹¹ T. 13 November 2008, p. 42 and 53.

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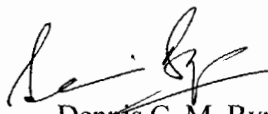
9. Having now considered the testimony of Théophile Urikumwenimana in its entirety, and reviewed his testimony in the *Muhimana* proceedings, the Chamber finds that the Defence has not established that it suffered material prejudice from the Prosecution's violation of Rule 66. Further, the Chamber agrees with the Prosecution that since it did not use the *Muhimana* transcript or judgement to cross-examine Urikumwenimana, it would not be appropriate to strike out its cross-examination in its entirety. Since the Prosecution's cross-examination of Urikumwenimana is only marginally related to Nzirorera, the Chamber finds that it is not possible to strike out the Prosecution's cross-examination only in this respect. Finally, the Chamber finds that the Defence failed to demonstrate that the more drastic remedies requested were called for in the circumstances.

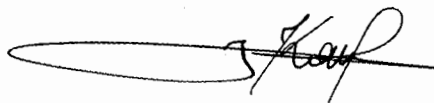
FOR THE ABOVE NOTED REASONS, THE CHAMBER

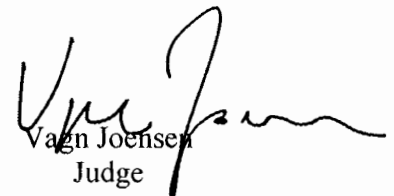
GRANTS Joseph Nzirorera's Motion in part; and

DENIES Joseph Nzirorera's request for remedial and punitive measures.

Arusha, 22 April 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

