



UNITED NATIONS  
NATIONS UNIES

ICTR-07-91-T  
23-04-2009  
(4037 - 4035)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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A

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Mr. Adama Dieng

**Date:** 23 April 2009

**THE PROSECUTOR**

v.

**Léonidas NSHOGOZA**

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

2009 APR 23 P 12: 17  
JUDICIAL RECORDS/ARCHIVES  
RECEIVED  
23/04/2009

**DECISION ON ORAL MOTION FOR RECONSIDERATION OF SANCTIONS**  
*Rules 46 and 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Richard Karegyesa  
Abdoulaye Seye  
Dennis Mabura  
Marie Ka

**For the Accused:**

Allison Turner

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## INTRODUCTION

1. On 11 March 2009, the Chamber sanctioned Ms. Allison Turner, Counsel for Mr. Léonidas Nshogoza, for failure to comply with the Chamber's orders. The Chamber fined Ms. Turner \$5,000.00 (Five Thousand Dollars) and directed the Registrar to seek approval from the President of the Tribunal ("President") to communicate her misconduct to the professional body that regulates the conduct of Counsel in her state of admission.<sup>1</sup> On 16 March 2009, the Chamber further sanctioned Ms. Turner for obstructive conduct, her comportment in the courtroom and her failure to commence her case.<sup>2</sup> The Chamber imposed a fine of \$500.00 (Five Hundred Dollars), invited Ms. Turner to submit a written apology to the Chamber, and directed the Registrar to seek approval from the President to communicate her misconduct to the professional body that regulates the conduct of Counsel in her state of admission.<sup>3</sup>

2. During the Defence's opening statement on 16 March 2009, Ms. Turner moved orally for the Chamber to reconsider the Impugned Decisions "so that the Defence can attend to the task at hand which is, focusing and working and dedicating itself with all the professionalism and energy that this case deserves" ("Oral Motion").<sup>4</sup>

## DISCUSSION

### *Law on Reconsideration*

3. Though reconsideration is not expressly provided for in the Statute or the Rules, the Trial Chamber has an inherent power to reverse or revise a prior decision where new material circumstances have arisen that did not exist at the time of the original decision, or where the decision was erroneous or an abuse of discretion and has caused prejudice or injustice to a

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<sup>1</sup> *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-PT, Decision to Sanction the Defence for Failure to Comply with the Chamber's Orders, 11 March 2009. The Chamber's acted pursuant to sub-Rules 46 (A) and (B) ("Sanctions Decision").

<sup>2</sup> Oral Ruling Sanctioning Defence Counsel, T. 16 March 2009, p. 2; *Prosecutor v. Nshogoza*, Case No. ICTR-07-91-PT, Further Decision to Sanction Defence Counsel for Misconduct, 17 March 2009 ("Further Sanctions Decision"); The written Decision issued on 17 March 2009 provides written reasons for the Oral Ruling rendered on 16 March 2009.

<sup>3</sup> The Sanctions Decision and Further Sanctions Decision are collectively the "Impugned Decisions".

<sup>4</sup> T. 16 March 2009, p. 3. By email correspondence dated 3 April 2009, the Chamber advised Defence Counsel that, absent written submissions in accordance with Rule 73, it would be consider her request for reconsideration solely on the basis of her oral motion.



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party.<sup>5</sup> Further, it is for the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.<sup>6</sup>

*Do the Impugned Decisions Warrant Reconsideration?*

4. The Chamber notes that the Defence has not submitted that there are new material circumstances that have arisen since the Impugned Decisions, nor has the Defence demonstrated that the Impugned Decisions were erroneous or an abuse of discretion and that they have caused prejudiced or injustice to the Accused. The Chamber recalls that the burden is upon the moving party to demonstrate the special circumstances that warrant reconsideration.<sup>7</sup>

5. The Chamber finds that the Defence has failed to provide any substantive reasons for its request, and has therefore not met the test for reconsideration of the Impugned Decisions.

**FOR THESE REASONS THE CHAMBER**

**DENIES** the Defence Motion.

Arusha, 23 April 2009

  
Khalida Rachid Khan  
Presiding Judge

  
For and on behalf of  
Lee Gacuga Muthoga  
Judge

  
Aydin Sefa Akay  
Judge



<sup>5</sup> *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7; *Prosecutor v. Karamera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 6; *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera et al.*, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure, 31 October 2005, para. 3; *Karemera et al.*, Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

<sup>6</sup> See *Prosecutor v. Nzirorera et al.*, Case No. ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, 10 October 2003, para 6.

<sup>7</sup> *Ibid.*