



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
29-4-2009  
(45933-45931)

45933  
HM

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:** 29 April 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 APPLICATION FOR CERTIFICATION  
TO APPEAL DISCLOSURE DECISION ON WITNESS ALG**

*Rule 54 of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Don Webster  
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

## INTRODUCTION

1. Joseph Nzirorera moves for certification to appeal the *Decision on Joseph Nzirorera's 23<sup>rd</sup> Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Witness ALG*.<sup>1</sup> In the Impugned Decision, the Chamber held that Rule 66(B) of the Rules of Procedure and Evidence requires the Prosecution to disclose only that information in its possession at the time a request for inspection is made. Consequently, the Prosecution was not under an obligation to disclose a statement given in November 2008 by Witness ALG pursuant to a 2004 inspection request by Nzirorera.<sup>2</sup>

2. Joseph Nzirorera argues that the Chamber erred in coming to this conclusion, and in particular by failing to interpret the Prosecution's obligations under Rule 66(B) in light of Rule 67(D), which in his view results in an on-going obligation on the Prosecutor to disclose requested material.<sup>3</sup> The Prosecution, in response, submits that the Motion is baseless and should be denied in its entirety.<sup>4</sup>

## DELIBERATIONS

3. Rule 73(B) of the Rules of Procedure and Evidence provides that certification to appeal may only be granted if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Appeals Chamber recognizes the discretionary powers of the Trial Chamber over Rule 73(B) procedures and regularly emphasizes that requests for certification to appeal are only warranted under exceptional circumstances.<sup>5</sup>

4. Joseph Nzirorera submits that the scope of the Prosecution's disclosure obligations, and particularly its on-going nature, is an issue which meets the criteria for certification pursuant to Rule 73(B) because the extent of the Prosecution's disclosure obligations goes to the very

<sup>1</sup> Application for Certification to Appeal Disclosure Decision on Witness ALG, filed 31 March 2009 ("Motion"); Reply Brief: Application for Certification to Appeal Disclosure Decision on Witness ALG, filed 7 April 2009 ("Reply"); See *Decision on Joseph Nzirorera's 23<sup>rd</sup> Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures: Witness ALG*, 30 March 2009 ("Impugned Decision").

<sup>2</sup> Impugned Decision, para. 11.

<sup>3</sup> Motion, paras. 2-4.

<sup>4</sup> Prosecution's Response to Joseph Nzirorera's Application for Certification to Appeal Disclosure Decision on Witness ALG, 6 April 2009 ("Response").

<sup>5</sup> *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), *Decision on Mathieu Ndirumpatse's Request for Certification to Appeal the Order of 17 April 2008 on the Presentation of the Defence Case*, 14 May 2008, para. 4.

heart of trial fairness and because broad categories of information are involved and could therefore affect the finality of the judgement if not corrected.<sup>6</sup>

5. While the Chamber accepts Joseph Nzirorera's contention that the impact of Rule 67(D) on Rule 66(B) has not been specifically decided in the jurisprudence,<sup>7</sup> the Chamber notes that the Impugned Decision was decided by reference to a decision in which the Appeals Chamber concluded that there is no ongoing disclosure obligation under Rule 66(A)(ii).<sup>8</sup> Further, the Impugned Decision followed the guidance of the *Blaškić* Decision and interpreted Rule 66(B) according to its plain meaning.<sup>9</sup> Consequently, the Chamber agrees with the Prosecution that there is no serious doubt regarding the correctness of the legal principles at issue and that putting this matter before the Appeals Chamber is unlikely to materially advance the proceedings.<sup>10</sup>


**FOR THE ABOVE NOTED REASONS, THE CHAMBER**

**DENIES** Joseph Nzirorera's Motion in its entirety.

Arusha, 29 April 2009, done in English.



Dennis C. M. Byron  
Presiding Judge



Gberdao Gustave Kam  
Judge



Vagn Joensen  
Judge

[Seal of the Tribunal]



<sup>6</sup> Motion, paras. 5-6; Reply, para. 7.

<sup>7</sup> Reply, para. 6.

<sup>8</sup> Impugned Decision, paras. 5 and 10; See *Prosecutor v. Blaškić*, Case No. IT-95-14, Decision on Appellant's Motions for Production of Material, Suspension or Extension of the Briefing Rule, and Additional Filings (AC), 26 September 2008 ("*Blaškić* Decision").

<sup>9</sup> Impugned Decision, para. 10.

<sup>10</sup> Response, paras. 6 and 8; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41, Decision on Certification of Appeal Concerning Admission of Written of Witness XXO, 11 December 2003, para. 6.