



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
20-05-2009
(46093-46091)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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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: 20 May 2009

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON JOSEPH NZIRORERA'S APPLICATION FOR CERTIFICATION
TO APPEAL DECISION ON 24TH RULE 66 VIOLATION**
Rule 73(B) of the Rules of Procedure and Evidence

Office of the Prosecution:
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INTRODUCTION

1. Pursuant to Rule 73(B) of the Rules of Evidence and Procedure ("Rules"), the Defence for Joseph Nzirorera moves for certification to appeal the Trial Chamber's *Decision on Joseph Nzirorera's 24th Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures* ("Impugned Decision").¹ In the Impugned Decision, the Trial Chamber found that the Prosecution had not violated Rules 66(B) or 68 by failing to record the 2004 statement of Felicien Muberuka.² The Prosecution opposes Nzirorera's Application in its entirety.³

DISCUSSION

2. Rule 73(B) of the Rules 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 moving party must demonstrate that both requirements of Rule 73(B) are satisfied, and even then, certification to appeal must remain exceptional.⁴

3. Joseph Nzirorera submits that the Trial Chamber erred in the Impugned Decision by ruling that the Prosecution is under no obligation to record and disclose exculpatory information it receives during the course of its investigation.⁵ Contrary to Nzirorera's

¹ Joseph Nzirorera's Application for Certification to Appeal Decision on 24th Rule 66 Violation, filed on 7 May 2009 ("Nzirorera's Motion"); *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's 24th Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures, 6 May 2009.

² Impugned Decision, para. 8.

³ Prosecutor's Response to "Joseph Nzirorera's Application for Certification to Appeal Decision on 24th Rule 66 Violation" filed on 11 May 2009 ("Prosecution's Response"), para. 6.

⁴ *Karemera et al.*, Decision on Mathieu Ngirumpatse's Request for Certification to Appeal the Order of 17 April 2008 on the Presentation of the Defence Case, 14 May 2008, para. 4.

⁵ Nzirorera's Motion, para. 2.

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submissions however, the Trial Chamber notes that the Impugned Decision does not include such a holding, but rather accepts the Prosecution's submission that there was nothing to record in the 2004 statement of Felicien Muberuka.⁶ Accordingly, the issue to which Nzirorera refers in his Application does not arise in the Impugned Decision. As certification is only granted to appeal issues that have been *decided* by the Chamber and not questions that may be impliedly raised by a decision or *dicta*,⁷ the Trial Chamber finds that Nzirorera's Motion fails to meet the requirements of Rule 73(B).

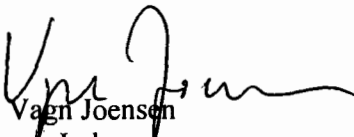
FOR THESE REASONS, THE CHAMBER

DENIES Joseph Nzirorera's Motion in its entirety.

Arusha, 20 May 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



⁶ Impugned Decision, para. 8.

⁷ *Karemera et al.*, Decision on Joseph Nzirorera's Application for Certification to Appeal Decision on Mudahinyuka Disclosure, 18 February 2009, para. 3; *Karemera, et al.*, Decision on Joseph Nzirorera's Application for Certification to Appeal Decision on Tenth Rule 68 Motion, 4 March 2008, para. 3; *Karemera, et al.*, Decision on Joseph Nzirorera's Application for Certification to Appeal Issue of Prosecution's Obligation to Record Exculpatory Information, 26 November 2007, para. 4.