



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
03-07-2009
(46539-46537)

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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: 3 July 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 NZIRORERA MOTION FOR RECONSIDERATION OF FINE

Rule 46 and 54 of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Saidou N'Dow
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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

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46538

INTRODUCTION

1. On 26 June 2009, the Appeals Chamber delivered a decision in *Nshogoza v. The Prosecutor* in which it determined that pecuniary sanctions are not within the permitted scope of penalties that may be applied under Rule 46 of the Rules of Procedure and Evidence.¹
2. On 29 June 2009, Joseph Nzirorera moved for reconsideration of a decision of this Chamber in which it imposed a fine on his counsel for filing a motion which the Chamber found to be an abuse of process.² In Response, the Prosecution leaves the matter to the discretion of the Chamber, but submits that a fine may be imposed upon counsel pursuant to Rule 73(F).³

DELIBERATIONS

3. The Chamber has the inherent power to reconsider its own decisions, but this is an exceptional remedy available only in particular circumstances. Reconsideration is permissible when, *inter alia*, there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.⁴
4. Rule 46(A) provides that a Chamber may, after a warning, impose sanctions against a counsel if his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. Rule 73(F) provides that a Chamber may impose sanctions against Counsel if Counsel brings a motion that is frivolous or is an abuse of process. Such sanctions may include non-payment of fees associated with the motion and/or costs thereof.
5. In the Decision of 27 February, the Chamber found that Joseph Nzirorera's motion for reconsideration was frivolous and abusive of the process, and accordingly directed the Registrar to deny payment of fees related to the motion and to fine counsel for Nzirorera the equivalent sum of the fees that would have been earned for the motion had it not been an abuse of process.⁵

¹ *Léonidas Nshogoza v. The Prosecutor*, Case No. ICTR-2007-91-A, Decision on Appeal Concerning Sanctions, 26 June 2009 ("*Nshogoza Decision*"), para. 29.

² Joseph Nzirorera's Motion for Reconsideration of "Fine" Imposed on his Lead Counsel, filed 29 June 2009; seeking reconsideration of *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision, 27 February 2009 ("*Decision of 27 February*").

³ Prosecutor's Response to Nzirorera's Motion for Reconsideration of "Fine" Imposed on his Lead Counsel, 30 June 2009 ("*Prosecution Response*").

⁴ *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Certificate of Safe Conduct, 24 March 2009.

⁵ Decision of 27 February, para. 8.

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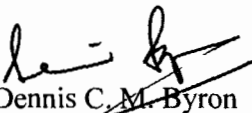
6. Joseph Nzirorera submits that the Chamber erred in imposing this fine, in light of the disposition of the *Nshogoza* Decision that a bench of Trial Chamber III acted outside of its jurisdiction in imposing pecuniary sanctions on counsel under Rule 46(A). Nzirorera further argues that, to the extent that the fine was imposed under Rule 73(F), this Rule likewise does not permit the imposition of a fine against counsel.

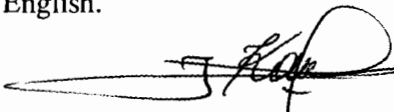
7. The Chamber notes that the fine under consideration was imposed pursuant to Rule 46(A) and therefore finds that, in light of the *Nshogoza* Decision, reconsideration is warranted. The Chamber vacates the fine imposed on Counsel for Joseph Nzirorera.

FOR THE FOREGOING REASONS, THE CHAMBER

- I. **GRANTS** Joseph Nzirorera's Motion; and,
- II. **DIRECTS** the Registrar to vacate the fine imposed on Lead Counsel for Joseph Nzirorera and to return to him the full amount of the fine paid.

Arusha, 3 July 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vaggr Joensen
Judge

