

ICTR-98-44-T
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UNITED NATIONS
NATIONS UNIES

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: 31 July 2009

JUDICIAL RECORDS DIVISION
2009 AUG -3 P 2:50

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

**RECONSIDERATION OF AND CORRIGENDUM TO THE CHAMBER'S
DECISION ON JOSEPH NZIRORERA'S MOTIONS FOR ADMISSION OF
WRITTEN STATEMENTS AND TESTIMONY**

Rules 54 and 92 bis of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 15 July 2009, the Chamber rendered a decision on Joseph Nzirorera's motions for the admission of written statements and transcripts of testimony pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence.¹ The Chamber has recently learnt of a fact that was not known to it when it rendered this Decision that requires it to reconsider part thereof. The Chamber has also noted four errors that require amendment by way of *corrigendum*.

DELIBERATION

(i) Reconsideration of previous holding in Decision on Nzirorera's 92 bis Motions

2. 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.²

3. The Chamber notes that in its Decision on Nzirorera's 92 *bis* Motions, it found that Annex 35, the statement of Jean-Marie Vianney Higiho, was "incomplete" and "therefore unreliable."³ On 23 July 2009, the Registry circulated a complete version of the statement to the Chamber and the Parties and explained that an error had taken place in the electronic scanning process. On 24 July 2009, the Prosecution confirmed, with an e-mail to the Chamber's judgement coordinator, that it would not be filing additional submissions on the admission of this statement following the reception of its complete version. The Chamber

¹ *Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera *et al.*"), Decision on Joseph Nzirorera's Motions for Admission of Written Statements and Testimony, 15 July 2009 ("Decision on Nzirorera's 92 *bis* Motions").

² *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision, 27 February 2009, para. 2.

³ Decision on Nzirorera's 92 *bis* Motions, para. 18.

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will therefore decide whether this statement should be admitted, drawing on the applicable law set out in its Decision on Nzirorera's 92 *bis* Motions⁴ and the previous submissions of the Parties.⁵

4. The Chamber notes that in a statement signed on 21 December 2007 in the presence of a notary public in the state of Massachusetts, Jean-Marie Vianney Higiroy makes a number of declarations relating to the dissemination of a speech given by Léon Mugesera on 22 November 1993.⁶

5. The Chamber concludes that this statement goes to proof of a matter other than the acts and conduct of the Accused as charged in the Indictment and that it is relevant and of probative value as it addresses issues raised by the evidence adduced by the Prosecution. The Chamber also finds that the admissible statement is cumulative in nature, as oral evidence has been heard and will be heard on similar facts. The Chamber finally notes that the statement appears to have been witnessed by a person authorised to do so in accordance with the law and procedure of a State, as per Rule 92 *bis* (B)(i). However, the Chamber notes that the requirement of Rule 92 *bis* (ii) has not been met as the person witnessing the statement did not verify, in writing, a number of elements regarding the statement and its author. Accordingly, the Chamber orders Joseph Nzirorera to complete the certification process of this statement pursuant to Rule 92 *bis* (B).

6. The Chamber thus finds that this statement is admissible pursuant to Rule 92 *bis*, subject to the disclosure of the identifying information of its author and its certification pursuant to Rule 92 *bis* (B).⁷

⁴ *Ibid.*, paras 6-7.

⁵ Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony ("Nzirorera's Omnibus 92 *bis* Motion"), filed on 10 December 2008; Prosecutor's Response to Joseph Nzirorera's Omnibus Motion for Admission of Written Statements and Testimony, filed on 2 February 2009.

⁶ See statement identified as Annex 35 to Nzirorera's Omnibus 92 *bis* Motion, the complete version of which was circulated to the Parties on 23 July 2009.

⁷ *Ibid.*, paras 27, 112-113. See also *Karemera et al.*, Order Varying Decision of 15 July 2009, 16 July 2009.

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7. However, the Chamber decides not to call Jean-Marie Vianney Higiroy for cross-examination as his statement touches upon a peripheral issue between the Parties.

(ii) Corrigendum to Decision on Nzirorera's 92 bis Motions

8. First, the Chamber notes that paragraph 112 of the Decision on Nzirorera's 92 bis Motions reads "[t]he Chamber recalls that Édouard Karemera was required to provide full identifying information for all of his witnesses prior to the commencement of his defence" and footnote 58 cites to a related decision on this point, namely, "*Karemera et al.*, Decision on Prosecutor's Submission Concerning Édouard Karemera's Compliance with Rule 73ter and Chamber's Orders, 2 April 2008, paras 7-8." However, the correct statement at paragraph 112 should read "[t]he Chamber recalls that Joseph Nzirorera was required to provide full identifying information for all of his witnesses, regardless of the Chamber's decision on the present motions" and the correct reference in footnote 58 should be to the following decision: "*Karemera et al.*, Decision on the Prosecutor's Notice of Deficiencies in Joseph Nzirorera's Rule 73ter Filings and Motion for Remedial Measures, 17 February 2009, para. 18."

9. Second, the Chamber notes that paragraph 17 ends with the following words: "the Chamber finds that its probative value is limited. identical" The word "identical" should be omitted from this passage.

10. Third, the Chamber notes that paragraph 115 reads as follows: "The Chamber thus accords 1 hour for the cross-examination and 15 minutes for the re-direct examination of each of the fourteen authors of admitted 92 bis statements, for which it requires cross-examination. The Chamber thus grants Nzirorera three extra days for the presentation of his case." Paragraph 115 should read as follows: "The Chamber thus accords 1 hour for the cross-examination and 15 minutes for the re-direct examination of each of the **seventeen** authors of

admissible 92 *bis* statements, for which it requires cross-examination. The Chamber thus grants Nzirorera **four** extra days for the presentation of his case.”

11. Fourth, the Chamber notes that it omitted to include Annex 92 in its list of admissible statements for which certification had to be obtained pursuant to Rule 92 *bis* (B) included in the third and fourth paragraphs of the order in its Decision on Nzirorera's 92 *bis* Motions.

These paragraphs currently read:

ORDERS Joseph Nzirorera to obtain certification, as prescribed by Rule 92 *bis* (B), of the uncertified statements identified in Annexes 1-3, 6, 18-19, 28, 30-33, 40, 42, 44-46, 48, 53, 59, 66-67, 71-84, 87-88, 90, 93-98, 100-112 of his Omnibus Motion for Admission of Written Statement and Testimony, Annexes 53 and 54 of his Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, Annex 28 of his Second Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion and Annex 128 of his Motion to Admit Statement of Emmanuel Nyamuhimba, within 45 days of this Decision;

DECLARES ADMISSIBLE, subject to the disclosure of the identifying information of their authors and their certification pursuant to Rule 92 *bis* (B), the entirety of the statements identified in Annexes 1-3, 6, 18-19, 28, 30-33, 40, 42, 44-46, 48, 53, 59, 66-67, 71-84, 87-88, 90, 93-98, 100-112 of Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony, Annexes 53 and 54 of his Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, Annex 28 of his Second Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, and Annex 128 of his Motion to Admit Statement of Emmanuel Nyamuhimba, within 45 days of this Decision;

These paragraphs should read as follows:

ORDERS Joseph Nzirorera to obtain certification, as prescribed by Rule 92 *bis* (B), of the uncertified statements identified in Annexes 1-3, 6, 18-19, 28, 30-33, 40, 42, 44-46, 48, 53, 59, 66-67, 71-84, 87-88, 90, 92-98, 100-112 of his Omnibus Motion for Admission of Written Statement and Testimony, Annexes 53 and 54 of his Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, Annex 28 of his Second Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion and Annex 128 of his Motion to Admit Statement of Emmanuel Nyamuhimba, within 45 days of this Decision;

DECLARES ADMISSIBLE, subject to the disclosure of the identifying information of their authors and their certification pursuant to Rule 92 *bis* (B), the entirety of the statements identified in Annexes 1-3, 6, 18-19, 28, 30-33, 40, 42, 44-46, 48, 53, 59, 66-67, 71-84, 87-88, 90, 92-98, 100-112 of Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony, Annexes 53 and 54 of his Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, Annex 28 of his Second Supplement to Joseph Nzirorera's Omnibus Rule 92 *bis* Motion, and Annex 128 of his Motion to Admit Statement of Emmanuel Nyamuhimba, within 45 days of this Decision;

12. The Decision on Nzirorera's 92 *bis* Motions is therefore amended accordingly.

FOR THESE REASONS, THE CHAMBER

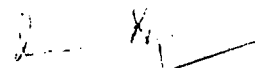
RECONSIDERS part of its Decision on Nzirorera's 92 *bis* Motions;

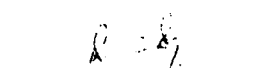
DECLARES ADMISSIBLE, subject to the disclosure of the identifying information of its author and the verification of its certification pursuant to Rule 92 *bis* (B), the entirety of the statement identified in Annex 35 to Joseph Nzirorera's Omnibus Motion for Admission of Written Statement and Testimony in its complete version circulated by the Registry on 23 July 2009;

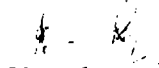
ORDERS Joseph Nzirorera to obtain certification of this statement, as prescribed by Rule 92 *bis* (B), within 45 days of this Decision;

ORDERS Joseph Nzirorera to disclose to the other Parties all identifying information currently in his possession for the author of this statement, within ten days of this Decision.

Arusha, 31 July 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

