

ICTR-98-44-T
8-9-2009
(47759-47757)

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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: 8 September 2009

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JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S APPLICATION FOR CERTIFICATION
TO APPEAL DECISION ON 16TH NOTICE OF RULE 68 VIOLATION**

Rule 73(B) of the Rules of Evidence and Procedure

Office of the Prosecution:

Don Webster
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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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INTRODUCTION

1. Joseph Nzirorera moves for certification to appeal the *Decision on Joseph Nzirorera's 16th Notice of Rule 68 Violation: Testimony of RPF Insiders of 3 July 2009*.¹ In the Impugned Decision, the Trial Chamber found that the Prosecution had not violated Rule 68 of the Rules of Procedure and Evidence ("Rules") by failing to disclose the closed-session transcripts of two witnesses, ALPHA-1 and SABS in the *Ndindiliyimana* Case. The Prosecution opposes Nzirorera's application.²

DELIBERATION

2. Pursuant to Rule 73(B) of the Rules, the Chamber may grant certification to appeal if the impugned "decision involves an issue" that meets certain criteria. Rule 73(B) provides that no appeal without certification from the Chamber may 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.³

3. In the Impugned Decision, the Chamber found that the testimony of the two witnesses did not fall under Rule 68 because their testimony did not relate to charges against Joseph Nzirorera or otherwise to his case. In his application for certification, Nzirorera, however, does not challenge that finding, but wishes to put to the Appeals Chamber an argument that was not included in his original motion and not considered by the Chamber, namely, that the testimony of the two witnesses would fall under Rule 68 because the disclosure of their testimony could allow him to meet and interview them and possibly obtain more specific information related to the crimes of which he is charged and the fabrication of evidence in his case.

4. Thus, as the Impugned Decision did not adjudicate the issue that Nzirorera wishes to put to the Appeals Chamber, his request for certification cannot be granted.

¹ Joseph Nzirorera's Application for Certification to Appeal Decision on 16th Rule 68 Violation, filed on 6 July 2009 ("Application"); see *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's 16th Notice of Rule 68 Violation: Testimony of RPF Insiders, 3 July 2009 ("Impugned Decision").

² Prosecutor's Response to Joseph Nzirorera's Application for Certification to Appeal Decision on 16th Rule 68 Violation filed on 10 July 2009 ("Response"), para. 2.

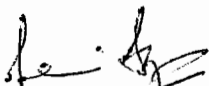
³ *Karemera et al.*, Decision on Mathieu Ndirumpatse's Request for Certification to Appeal the Order of 17 April 2008 on the Presentation of the Defence Case, 14 May 2008, para. 4.

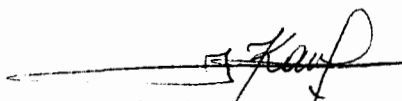
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FOR THESE REASONS, THE CHAMBER

DENIES Joseph Nzirorera's Motion in its entirety.

Arusha, 8 September 2009, done in English.


Dennis C.M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]

