



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
19-11-2009
(48697-48695)

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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: 19 November 2009

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

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**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION:
DECISION ON MOTION FOR DISCLOSURE OF BENEFITS FOR PROSECUTION
WITNESS ZF**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecution:

Don Webster
Saidou N'Dow
Arif Virani
Eric Husketh
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

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INTRODUCTION

1. On 21 October 2009, the Chamber denied Joseph Nzirorera's motion for reconsideration of an oral decision that denied him disclosure of materials from the Witnesses and Victims Support Section ("WVSS") related to Witness ZF.¹ Nzirorera now moves for reconsideration of the Impugned Decision.²

DELIBERATIONS

2. A Chamber has the power to reconsider its decisions when: (1) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (2) there has been a material change in circumstances since it made its original Decision; or (3) there is reason to believe that its original Decision was erroneous or constituted an abuse of power, which resulted in an injustice thereby warranting the exceptional remedy of reconsideration.³

3. Joseph Nzirorera contends that the Chamber erred in fact when it stated that WVSS independently decided to provide relocation services to Witness ZF because WVSS actually provided these services at the request of the Prosecution.⁴ The Chamber did not state that WVSS independently decided to provide relocation services to Witness ZF; instead, it simply stated that WVSS was the organ of the Tribunal that *conferred* these services upon Witness ZF.⁵ Therefore, the Chamber did not commit the error of fact alleged by Nzirorera.

4. Regardless, the Chamber notes that Joseph Nzirorera has not articulated how this factual error could result in an injustice thereby warranting the exceptional remedy of reconsideration. Nzirorera did not tie the alleged error to the decisive issue in the Impugned Decision, namely that he was not entitled to disclosure of the benefits paid to Witness ZF by WVSS because these were standard benefits, which were not paid from the Prosecution's budget.⁶ The Chamber recalls that the disclosure it ordered concerning Witnesses G and T concerned special benefits that were paid for by the Prosecution.⁷

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Motion for Disclosure of Benefits to Prosecution Witness ZF (TC), 21 October 2009 ("Impugned Decision"). The Impugned Decision denied reconsideration of: *Karemera et al.* Oral Decision, T. 8 June 2006, pp. 4, 5.

² Joseph Nzirorera's Motion for Reconsideration: Decision on Motion for Disclosure of Benefits to Prosecution Witness ZF, filed on 26 October 2009 ("Nzirorera's Motion").

³ *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision (TC), 27 February 2009, para. 2.

⁴ Nzirorera's Motion, para. 3.

⁵ Impugned Decision, para. 4.

⁶ See Impugned Decision, paras. 4, 5.

⁷ *Id.* The Chamber notes that Rule 39(ii) of the Rules of Procedure and Evidence permits the Prosecutor, in the conduct of an investigation, to: "[t]ake all measures deemed necessary for the purpose of the investigation and to support the prosecution at trial, including the taking of special measures to provide for the safety of potential witnesses and informants." Moreover, the Chamber recalls that its prior order to the Prosecution to disclose benefits paid to Witnesses G and T concerned special running costs that were paid during the term of their relocation/protection. See *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of Oral Decision on Motion to Compel Full Disclosure of ICTR Payments for the Benefit of Witnesses G and T (TC), 29 May 2008.

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5. Joseph Nzirorera also claims that the Chamber erred by allegedly interpreting a statement in his reply⁸ to mean that WVSS paid for the benefits to Witnesses G and T.⁹ The Chamber recalls that, in response to Nzirorera's original motion,¹⁰ the Prosecution stated that it did not have any records documenting the nature or cost of WVSS's special protective regime for Witness ZF because that information "is under the exclusive custody and control of WVSS."¹¹ Nzirorera's Reply specifically responded to this point by stating that: "[t]he fact that the information is in the possession of the Registry rather than the [P]rosecution is of no consequence. The benefits for Witnesses G and T were paid out by the Registry as well..."¹² Therefore, it would appear that Nzirorera used the terms "WVSS" and "Registry" interchangeably.


6. In any event, regardless of what Nzirorera's Reply intended to state, Joseph Nzirorera has not articulated how a possible misinterpretation by the Chamber in this regard could result in an injustice thereby warranting the exceptional remedy of reconsideration. The Chamber notes that, even if it committed the second factual error alleged by Nzirorera, this still would have no bearing on the decisive issue in the Impugned Decision, as outlined in paragraph 4 above.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

DENIES Nzirorera's Motion.

Arusha, 19 November 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge



⁸ Reply Brief: Joseph Nzirorera's Motion for Disclosure of Benefits to Prosecution Witness ZF, filed on 14 September 2009 ("Nzirorera's Reply").

⁹ Nzirorera's Motion, para. 4.

¹⁰ Joseph Nzirorera's Motion for Disclosure of Benefits to Prosecution Witness ZF, filed on 7 September 2009.

¹¹ Prosecutor's Response to Nzirorera's Motion for Disclosure of Benefits to Witness ZF, filed on 9 September 2009, para. 5.

¹² Nzirorera's Reply, para. 6.