



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: 25 November 2009

THE PROSECUTION

v.

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

**DECISION ON JOSEPH NZIRORERA'S APPLICATION FOR CERTIFICATION
TO APPEAL ORAL DECISION ON 26TH NOTICE OF RULE 66 VIOLATION AND
17TH NOTICE OF RULE 68 VIOLATION**

Rule 73(B) 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

INTRODUCTION

1. On 28 October 2009, the Chamber issued an oral decision denying a motion filed by Joseph Nzirorera, which alleged that the Prosecution had violated Rules 66 and 68 of the Rules of Procedure and Evidence ("Rules").¹ Nzirorera now moves for certification to appeal the Impugned Decision.² The Prosecution opposes Nzirorera's Motion in its entirety.³

DELIBERATION

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.⁴ The moving party must demonstrate that both requirements of Rule 73(B) are satisfied, and even then, certification to appeal must remain exceptional.⁵

3. Joseph Nzirorera contends that the issue of whether the Prosecution has a continuing duty to produce materials requested under Rule 66(B) is one which affects the fair and expeditious conduct of the trial or its outcome.⁶ However, the Chamber notes that the Appeals Chamber has unequivocally stated, and this Chamber has often reiterated, that inspection of materials under Rule 66(B) is only triggered by a sufficiently specific request by the Defence.⁷ The Appeals Chamber does not mention Rule 67(D) in the *Bagosora et al.* Decision, perhaps because that rule clearly states that any obligation arising thereunder must be made "pursuant to the Rules", thereby precluding any possibility that Rule 67(D) could be used as a means to circumvent the specific and established requirements of Rule 66(B).

4. In any event, noting that certification to appeal must remain exceptional, and that the Appeals Chamber has already made a clear ruling on the issue, the Chamber does not

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Oral Decision on Joseph Nzirorera's 6th Notice of Rule 66 Violation and 17th Notice of Rule 68 Violation: Witness 6 (TC), T. 28 Oct. 2009, pp. 1, 2 ("Impugned Decision").

² Joseph Nzirorera's Application for Certification to Appeal Oral Decision on 26th Notice of Rule 66 Violation and 17th Notice of Rule 68 Violation, filed on 29 October 2009 ("Nzirorera's Motion").

³ Prosecution's Response to Joseph Nzirorera's Application for Certification to Appeal Rule 66(B) Inspection Decision – Witness 6, filed on 3 November 2009 ("Prosecution Response").

⁴ *The Prosecutor v. Theoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, ICTR-98-41-T ("*Bagosora et al.*"), Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal, 16 February 2006, para 4.

⁵ *Karemera et al.*, Decision on Édouard Karemera's Application for Certification to Appeal the Decision Denying his Motion for Admission of an Expert Witness (TC), 1 July 2009, para. 3.

⁶ Nzirorera's Motion, para. 5.

⁷ *Bagosora et al.*, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence (TC), 25 September 2006, para. 10 (*Bagosora et al.* Decision").

consider that certification to appeal in this instance would affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Due to the fact that Joseph Nzirorera has not satisfied the first prong of the test for certifying an interlocutory appeal, the Chamber does not reach the question of whether immediate resolution of the issue he seeks to appeal would materially advance the proceedings.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

I. **DENIES** Nzirorera's Motion.

Arusha, 25 November 2008, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]