



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-1
9-2-2010
(50088 - 50086)

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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: 9 February 2010

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL
RECORDS
SERVICES

1 2010 FEB -9 P 11: 59
[Signature]

**DECISION ON JOSEPH NZIRORERA'S APPLICATION FOR CERTIFICATION
TO APPEAL DECISION ON 27th RULE 66 VIOLATION**

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

[Signature]

INTRODUCTION

1. On 24 November 2009, the Chamber issued an oral Decision denying a motion filed by Joseph Nzirorera which alleged that the Prosecution had violated Rule 66(B) 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

DELIBERATIONS

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. Certification has been granted where a decision may concern the admissibility of broad categories of evidence, or where it determines particularly crucial matters of procedure or evidence.⁴

3. The Chamber, in the Impugned Decision, reiterated that the Prosecution does not have an ongoing obligation to produce materials for inspection under Rule 66(B) pursuant to a request from the Defence which was made before the Prosecution came into possession of the material sought. The Chamber further ruled that the requests Nzirorera previously made could not have triggered an inspection obligation under this rule because the requests were not sufficiently specific.⁵ Joseph Nzirorera contends that both holdings concerning disclosure under Rule 66(B) in the Impugned Decision are recurring and because of that they affect the fair and expeditious conduct of the proceedings.⁶ Nzirorera further contends an immediate resolution is needed so that the remainder of the Defence cases can proceed correctly and that

¹ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Oral Decision on Joseph's Nzirorera's 27th Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures (TC), T. 24 Nov. 2009, pp. 1-3 ("Impugned Decision").

² Joseph Nzirorera's Application for Certification to Appeal Decision on 27th Rule 66 Violation, filed 1 December 2009 ("Nzirorera's Motion").

³ Prosecutor's Response to Joseph Nzirorera's Application for Certification to Appeal the Decision on 27th Rule 66 Violation, filed 4 December 2009.

⁴ *The Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jerome-Clement Bicamumpaka, and Prosper Mugiraneza*, Case No. ICTR-99-50-T ("*Bizimungu et al.*"), Decision on the Prosecutor's Motion for Certification to Appeal the Trial Chamber's Decisions on Protection of Defence Witnesses (TC), filed on 28 September 2005, para. 3.

⁵ Impugned Decision, T. 24 November 2009, pp. 2, 3.

⁶ Nzirorera's Motion, para. 4.

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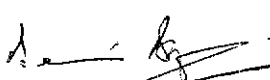
any prejudice from past use of documents may be cured before the fact-finding process begins.⁷

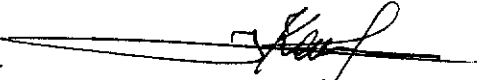
4. The Chamber agrees that the issues in question are likely to occur frequently with respect to materials used by the Prosecution during cross-examination of Defence witnesses and, considering the available Appeals Chamber jurisprudence, that an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Chamber, therefore, grants Nzirorera's application.

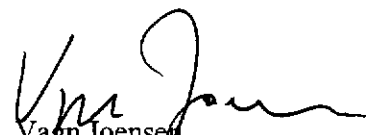
FOR THESE REASONS, THE CHAMBER

I. GRANTS Joseph Nzirorera's Application for Certification to Appeal.

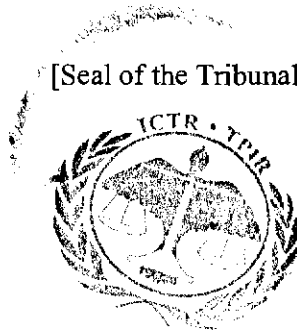
Arusha, 9 February 2010, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



⁷ *Id.*