



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
26-4-2010
(50950-50948)

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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: 26 April 2010

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTION

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON JOSEPH NZIRORERA'S MOTION TO VACATE SANCTIONS:
RULE 92 bis**

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
Saidou N'Dow
Sunkarie Ballah-Conteh
Takeh Sendze
Jean-Baptiste Nsanzimfura

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 7 April 2010, the Chamber imposed a sanction on Lead Counsel for Joseph Nzirorera, ordering that the Registrar deny payment of fees associated with the preparation of Nzirorera's motion for reconsideration of Ruhengeri Rule 92 *bis* evidence, filed 8 February 2010.¹ Nzirorera now requests that the Chamber vacate the sanctions imposed upon his Lead Counsel.² The Prosecution responded and deferred the matter to the discretion of the Chamber.³

DELIBERATION

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.⁴

3. The Chamber recalls that it based the sanction at issue on its 24 October 2008 decision where it informed Lead Counsel for Joseph Nzirorera that it would no longer accept piecemeal filings for admission of witness statements under Rule 92 *bis*.⁵ In that decision, the Chamber ordered Lead Counsel for Nzirorera to file an omnibus motion for the remaining statements he wished to have admitted, and directed the Registrar to deny fees for any additional Rule 92 *bis* filings unless good cause was shown.

4. Revisiting the matter, the Chamber finds that its directive to deny fees for any additional Rule 92 *bis* filings was limited to filings concerning additional statements Joseph Nzirorera wished to have admitted. The directive did not extend to motions for reconsideration of its eventual decision on Nzirorera's omnibus motion. Moreover, as Nzirorera points out, sanctions in this instance are not supported by Rule 73(F) because the

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Joseph Nzirorera's Motion for Reconsideration of the Chamber's Decision on Admission of Written Statements (TC), 7 April 2010, para. 25, ("Impugned Decision").

² Joseph Nzirorera's Motion to Vacate Sanctions: Rule 92 bis, filed on 12 April 2010.

³ Prosecutor's Response to Joseph Nzirorera's Motion to Vacate Sanctions: Rule 92 bis, filed on 19 April 2010.

⁴ *Karemera et al.*, Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision (TC), 27 February 2009, para. 2.

⁵ *Karemera et al.*, Order to Joseph Nzirorera to Reduce his Witness List (TC), 24 October 2008, ("24 October 2008 Decision").

motion at issue was neither frivolous nor an abuse of process because the Chamber granted it in part.

5. Therefore, the Chamber finds that reconsideration of the Impugned Decision is warranted and vacates the sanction it placed on Lead Counsel for Joseph Nzirorera in the Decision.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS Joseph Nzirorera's Motion.

Arusha, 26 April 2010, done in English.



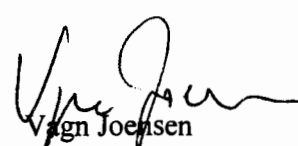
Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vagn Joensen

Judge

[Seal of the Tribunal]

