



**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

UNITED
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UNIES OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 25 June 2010

THE PROSECUTION

v.

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

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION:
MRND RUHENGERI DOCUMENTS**

Office of the Prosecution:
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INTRODUCTION

1. On 5 June 2002, Joseph Nzirorera submitted a request to the Prosecution for “all MRND communiqués, documents, or correspondence during the period 1992-1994” (“5 June 2002 Request”).¹ The Prosecutor obtained four documents relating to the MRND in March 2009 and submitted them as evidence on October 27, 2009.² Nzirorera filed a written notice³ followed by an oral motion alleging that the Prosecution violated Rule 66(B) by failing to disclose the MRND documents to him pursuant to his 5 June 2002 Request and opposed entering the four documents as evidence.⁴ The Trial Chamber denied this motion in an oral decision on 28 October 2009, holding that the Prosecution does not have a continuing obligation to provide materials for inspection pursuant to a Rule 66(B) request if the materials are not in its possession at the time of the request.⁵

2. On 17 May 2010 the Appeals Chamber reversed a Trial Chamber decision on a separate allegation of a Rule 66(B) violation, holding that the Prosecution has a continuing obligation to provide evidence to the Defence for inspection once a Rule 66(B) request has been made, providing the request is sufficiently specific.⁶ Pursuant to that ruling, Joseph Nzirorera filed a motion for reconsideration of the Impugned Decision, arguing that the Appeals Chamber's interpretation of Rule 66(B) obligations makes it clear that the Trial Chamber erred in finding that no Rule 66 violation had occurred.⁷

3. The Prosecution opposes the motion.

DELIBERATIONS

3. The standard for reconsideration has been well-established by this Tribunal. A Chamber has the inherent power to reconsider its decisions when: (i) a new fact has been discovered that was not known to the Chamber at the time it made its original Decision; (ii) there has been a material change in circumstances since it made its original Decision; or (iii) there is reason to believe that its original Decision was erroneous or constituted an abuse of

¹ Joseph Nzirorera's Motion for Reconsideration: MRND Ruhengeri Documents (“Motion”), filed on 24 May 2010, para. 1; Joseph Nzirorera's Rule 66(B) Inspection Request, filed on 5 June 2002.

² T. 27 October 2009, p. 4

³ Joseph Nzirorera's 26th Notice of Rule 66 Violation and 17th Notice of Rule 68 Violation: Witness 6 (TC), filed on 27 Oct. 2009 (“Notice”).

⁴ T. 27 Oct. 2009, pp. 1-6.

⁵ *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera* (“*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), 28 October 2009, (“Impugned Decision”).

⁶ *Karemera et al.*, Decision on Joseph Nzirorera's Appeal from Decision on Alleged Rule 66 Violation, 17 May 2010 (AC), paras. 24-25, (“Appeal Decision”).

⁷ Motion, paras. 3-5.

power on the part of the Chamber, resulting in injustice thereby warranting the exceptional remedy of reconsideration.⁸

4. Joseph Nzirorera submits that the Trial Chamber should reconsider the Impugned Decision because it incorrectly interpreted Rule 66(B) as not creating a continuing obligation on the Prosecution once a Defence inspection request is made. In light of the Appeal Decision, the Chamber's reason for dismissing the Original Motion was erroneous because it relied on an incorrect interpretation of Rule 66(B). Therefore, the Chamber will now reconsider the Impugned Decision.

5. Joseph Nzirorera submits that, as a result of the Appeal Decision, the Prosecution's disclosure violation is now clear. However, the Chamber did not reach the issue of the specificity of Nzirorera's inspection request in its Impugned Decision. The Prosecution's obligation to provide evidence for defence inspection only exists if the defence request "reaches a degree of specificity that allows a direct and unambiguous identification of the sought material as squarely falling into the ambit of that request."⁹

6. The Appeal Decision elaborates that a sufficiently specific request must indicate a "specific event or group of witnesses, . . . a time period and/or geographic location which the material refers to, or any other features defining the requested items with sufficient precision."¹⁰ Requests may also refer to documents if they are defined by "criteria which apply to a distinct group of individuals."¹¹ Examples of specifically requested materials include "immigration-related material of certain Defence witnesses, or witness statements of a specific witness."¹²

7. The Appeals Chamber ruled that Joseph Nzirorera's request for documents referring to "acts committed by members of the Interahamwe and whether Mr. Nzirorera planned, ordered, or otherwise aided and abetted those acts, or was responsible for them under Article 6(3)" ("*Interahamwe* Request") was sufficiently specific.¹³ In particular, the Appeal Chamber

⁸ *Karemera et al.*, Decision on Prosecutor's Motion for Reconsideration of Trial Chamber III Decision of 11 November 2009 Not to Admit Into Evidence I-P-048; *Karemera et al.*, Decision on Joseph Nzirorera's Second Motion for Finding of "No Case to Answer" and Motion for Reconsideration, 3 June 2008, para. 5; *Karemera et al.*, Decision on Reconsideration of Protective Measures for Prosecution Witnesses, 30 October 2006, para. 2; *Prosecutor v. Augustin Ndingiyimana, François-Xavier Nzuwonemeye, and Innocent Sagahutu* ("*Ndingiyimana et al.*"), Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials, 3 November 2004, para. 21.

⁹ Appeal Decision, para. 25.

¹⁰ *Ibid.*, para. 32.

¹¹ *Id.*

¹² *Id.*

¹³ *Ibid.*, para. 33.

noted that the *Interahamwe* Request delineated a category of documents linking acts of *Interahamwe* with the Accused and specified the quality of that link, namely whether [Nzirorera] planned, ordered, or otherwise aided and abetted those acts.¹⁴ The document in the Appeal Decision which fell within the ambit of the *Interahamwe* Request was a letter from Aloys Karekezi to the Prime Minister of Rwanda (“Karakezi Letter”) which referred to Nzirorera’s authority over a militia and that militia’s illegal activity.¹⁵

8. Joseph Nzirorera contends that the MRND documents at issue in this motion are encompassed by the 5 June 2002 Request to the Prosecution for “all MRND communiqués, documents, or correspondence during the period 1992-1994.”¹⁶

9. A specific request outlines a precise category of document that allows the Prosecution to reasonably identify items in its possession that fall within the confines of the request.¹⁷ The *Interahamwe* Request possessed several qualifying features that would allow the Prosecution to identify pertinent documents. First, it limited the request to those documents concerning the *Interahamwe* and Nzirorera, eliminating from consideration a large number of documents that reference either the *Interahamwe* or Nzirorera but not both. Second, the request specified the quality of the link between the *Interahamwe* and Nzirorera, limiting the request to those documents which show that Nzirorera “planned, ordered, or otherwise aided and abetted” the acts of the *Interahamwe*. By contrast, the 5 June 2002 Request asks for all documents relating to the largest political party in Rwanda during a three year period. It does nothing to delineate a specific category of MRND document or qualitatively define the relationship between the documents and the accused. As such, the 5 June 2002 Request was not sufficiently specific to trigger an obligation on the Prosecution to produce the MRND documents in question for defence inspection. Accordingly, the Chamber does not find that the Prosecution violated Rule 66(B) by failing to disclose the MRND documents to Nzirorera pursuant to his

¹⁴ *Id.*

¹⁵ *Ibid.*, paras. 7, 34.

¹⁶ Motion, para. 1.

¹⁷ Appeal Decision, para. 32.

5 June 2002 Request.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES Joseph Nzirorera's Motion.

Arusha, 25 May 2010, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]