



UNITED NATIONS
NATIONS UNIES

ICTR-98-44D-T
(15-03-2012
(9273-9271))

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Am

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Solomy Balungi Bossa, Presiding
Bakhtiyar Tuzmukhamedov
Mparany Rajohnson

Registrar: Adama Dieng

Date: 15 March 2012

THE PROSECUTOR

v.

Callixte NZABONIMANA
Case No. ICTR-98-44D-T

JUDICIAL RECORDS/ARCHIVES
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UNICTR

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Callixte Nzabonimana

***PROPRIO MOTU ORDER TO THE PARTIES CONCERNING NZABONIMANA'S
MOTION FOR APPROPRIATE RELIEF IN LIGHT OF THE PROSECUTION'S
DELAYED DISCLOSURE TO THE ACCUSED OF EXCULPATORY EVIDENCE***

(Rule 68(A) of the Rules of Procedure and Evidence)

Office of the Prosecutor

Paul Ng'arua
Memory Maposa
Simba Mawere
Mary Diana Karanja

Defence Counsel

Vincent Courcelle-Labrousse
Philippe Larochelle

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INTRODUCTION

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1. On 14 April 2012, the Defence sent a letter to the Prosecution requesting transcripts of testimony from three previous ICTR trials and statements from the former *bourgmestre* of Musambira *commune*.¹ On 17 February 2012 the Prosecution responded and sent to the Defence a CD ROM containing the requested material.² On 12 March 2012, the Defence filed "Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence" ("Motion").³ The Defence submits that the disclosure of the documents contained on the CD ROM has caused Nzabonimana "extreme prejudice" and that the documents are "of high exculpatory value". The relief requested by the Defence includes the re-opening of the case to allow further investigations and potentially calling additional witnesses.⁴ The Prosecution filed a Response on 14 March 2012, submitting that the materials disclosed are not exculpatory and that the Defence has not suffered prejudice.⁵

DELIBERATIONS

2. Rule 68(A) of the Rules of Procedure and Evidence ("Rules") imposes an obligation on the Prosecution to disclose to the Defence, as soon as practicable, any material which, in the actual knowledge of the Prosecution, may suggest the innocence or mitigate the guilt of an accused, or affect the credibility of the evidence led by the Prosecution in that particular case. As a rule of disclosure rather than of admissibility of evidence, Rule 68 imposes a categorical obligation to disclose any document or witness statement that contains exculpatory material.⁶
3. The Defence asserts that the disclosure of the documents contained on the CD ROM, 409 documents in number, has caused prejudice to the Accused. The Defence submits that it has had no Defence team since 2011 to analyse and review the documents.⁷

¹ Letter from Defence Counsel to Prosecution Counsel, dated 14 February 2012.

² *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecution Response to Defence Request Dated 14 February 2012, 17 February 2012.

³ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence, 12 March 2012.

⁴ Motion, paras. 22-25.

⁵ *Prosecutor v. Nzabonimana*, Case No. ICTR-98-44D-T, Prosecutor's Response to Nzabonimana's Motion for Appropriate Relief in Light of the Prosecution's Delayed Disclosure to the Accused of Exculpatory Evidence ("Response"), 14 March 2012, para.11.

⁶ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-AR73.13, ("Karemera et al."), Decision on "Joseph Nzirorera's Appeal from Decision on Tenth Rule 68 Motion"(AC), 14 May 2008, para. 12.

⁷ Motion, paras. 16-17.

4. The Chamber notes that DCDMS has confirmed that since 2012, the contracts of two Legal Assistants have been renewed and additional funds have been allocated to Lead Counsel for the Defence to undertake a review of these documents.⁸
5. The Chamber deems it most expeditious and in the interests of justice to have the Defence make specific and comprehensive submissions regarding potentially exculpatory material under Rule 68(A), as contained on the CD ROM disclosed on 17 February 2012 and which were not the subject of earlier disclosures.
6. The Chamber orders the Defence to make these submissions within four days of this Order. The Prosecution is ordered to respond four days thereafter.

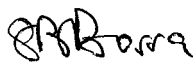
FOR THE ABOVE REASONS, THE CHAMBER

- I. ORDERS** the Defence to file specific and comprehensive submissions regarding potentially exculpatory material under Rule 68(A), as contained on the CD ROM disclosed on 17 February 2012 and which were not the subject of earlier disclosures by 19 March 2012;
- II. ORDERS** the Prosecution to file its submissions on the matter, if any, by 23 March 2012; and
- III. INFORMS** the Defence that it does not have the right to reply to the response(s) of the Prosecution.

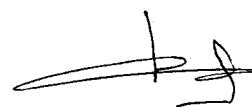
Arusha, 15 March 2012, done in English.



Solomy Balungi Bossa
Presiding Judge



Bakhtiyar Tuzmukhamedov
Judge
(absent at the time of
signature)



Mparany Rajohnson
Judge



⁸ Email correspondence from Mr. Laurent Wastelain, Associate Legal Officer, DCDMS Section to Miss Amanda Grafstrom, Associate Legal Officer, dated 13 March 2012.