

ICTR-98-44-T
06-10-2008
(37805-37801)

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR RWANDA

CASE No. ICTR-98-44-T

IN TRIAL CHAMBER No. 3

Before: Judge Dennis C.M. Byron, Presiding
Judge G. Gustave Kam
Judge Vagn Joensen

Registrar: Mr. Adama Dieng

Date Filed: 6 October 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

2008 OCT -6 A 9:58
JUDICIAL RECORDS/ARCHIVES
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JOSEPH NZIRORERA'S 19th NOTICE OF VIOLATION OF RULE 66
AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES:
JEAN-MARIE VIANNEY MUDAHINYUKA

The Office of the Prosecutor:

Mr. Don Webster
Ms. Allayne Frankson-Wallace
Mr. Iain Morley
Ms. Gerda Visser
Mr. Saidou N'Dow

Defence Counsel:

Mr. Peter Robinson
Mr. Patrick Nimy Mayidika Ngimbi

Counsel for Co-Accused:

Ms. Dior Diagne Mbaye and Mr. Felix Sow for Edouard Karemera
Ms. Chantal Hounkpatin and Mr. Frederick Weyl for Mathieu Ngirumpatse

1. Joseph Nzirorera respectfully contends that the prosecution has yet again violated its disclosure obligations under Rule 66(B), and perhaps Rule 68. He moves for immediate disclosure of all information obtained from Jean-Marie Vianney Mudahinyuka, and for remedial and punitive sanctions for the non-disclosure.

2. Jean-Marie Vianney Mudahinyuka, aka Zuzu, was a member of the National Committee of the Interahamwe. In 2004, he was arrested in the United States and prosecuted for making a false statement to the Immigration Service and assaulting a federal officer during his arrest.

3. On 13 July 2005, Mr. Nzirorera filed *Joseph Nzirorera's Second Motion to Compel Inspection and Disclosure*. Among the items sought were "reports of all information obtained from Jean Marie Vianney Mudahinyuka."¹

4. In its *Prosecutor's Response to Nzirorera's Second Motion to Compel Inspection and Disclosure* (20 July 2005), the prosecution represented that "the prosecutor has no information from *Mudahinyuka*."²

5. The Trial Chamber rendered its *Decision on Motions to Compel Inspection and Disclosure and to Direct Witnesses to Bring Judicial and Immigration Records* on 14 September 2005. It held that:

"The Defence has made a bare assertion that the Prosecution has obtained a statement from Jean-Marie Vianney Mudahinyuka. The prosecution has specifically denied its possession of such a statement. No evidence was adduced to support the assertion; as conceded by the Defence there is no basis to make an order in this regard. There is no basis to make such an order."³

¹ Paragraph 1(G)

² Paragraph 8

³ Paragraph 16

6. On 23 January 2006, Mr. Nzirorera filed *Joseph Nzirorera's Ex Parte Motion for Order for Interview of Defence Witness NZ1*. The motion was distributed to the prosecution by the Registry and the prosecution responded to the motion—opposing it in its entirety.⁴ The Trial Chamber denied the motion.⁵ Witness NZ1 was Jean-Marie Vianney Mudahinyuka.

7. Jean-Marie Vianney Mudahinyuka was listed as one of Joseph Nzirorera's defence witnesses in *Joseph Nzirorera's Third Rule 73 ter Filing* disclosed to the prosecution by the Trial Chamber on 30 July 2008.

8. On 22 August 2008, the Trial Chamber ordered the prosecution to allow inspection of all statements made by persons on his witness list, including Jean-Marie Vianney Mudahinyuka.⁶ The prosecution produced that material on 10 September 2008. No information from Mudahinyuka was provided.

9. On 27 September 2008, lead counsel for Mr. Nzirorera interviewed Jean-Marie Vianney Mudahinyuka. Mr. Mudahinyuka advised that he had been interviewed by representatives of the ICTR Office of the Prosecutor on several occasions and believed that some of his interviews had been recorded.

10. Mr. Mudahinyuka advised that while held at the Metropolitan Corrections Center in Chicago, Illinois, USA in 2004, he was interviewed by Stephen Rapp. He answered numerous questions about the 1994 Rwandan events, the Interahamwe, and the acts and conduct of Joseph Nzirorera, Mathieu Ngirumpatse, and Edouard Karemera. He

⁴ *Prosecutor's Response to Nzirorera's Ex Parte Motion for Order for Interview of Witness NZ1* (27 January 2006)

⁵ *Decision on Nzirorera's Ex Parte Motion for Order for Interview of Defence Witnesses NZ1, NZ2, and NZ3* (12 July 2006)

⁶ *Decision on Joseph Nzirorera's Fourth Motion for Inspection of Defence Witness Information* (22 August 2008)

said that at the conclusion of the interview, Mr. Rapp told him that his information was not of any value to the prosecution.

11. Mr. Mudahinyuka advised that he was contacted by the Office of the Prosecutor a second time in 2007 while he was incarcerated at the Federal Correctional Institution at Allenwood, Pennsylvania. This time he was interviewed by two investigators, who he believed were Canadians. He did not recall their names.

12. During this interview, which he believed was recorded, and took place over the course of two full days, Mudahinyuka answered their questions about the Rwandan events including the Interahamwe, MRND, and the three accused, as well as information concerning Prefet Tharcisse Renzaho and Georges Rutaganda. Mudahinyuka was a close friend of Rutaganda and was with him during much of the time.

13. Mr. Mudahinyuka advised that the two investigators returned about three months later with two other persons who were lawyers with the Office of the Prosecutor. He recalled that one was named Jonathan and was from New Zealand. He believes the other may have been from Somalia. He was then interviewed again by the four individuals and they also offered him a plea agreement. The interview took place over two or three days, and he ultimately told them that he was not guilty of killing anyone and therefore could not plead guilty.

14. Among the information that Mr. Mudahinyuka said he provided to the representatives of the Office of the Prosecutor was the fact that the Interahamwe was never formed for the purpose of killing Tutsis, that the killing of Tutsis was never discussed in Interahamwe committee meetings, that he knew of no military training or distribution of weapons to Interahamwe prior to the death of President Habyarimana, that

the Interahamwe never compiled lists of Tutsis, that he had attended MRND rallies and never heard any of the accused call for the extermination of Tutsis, that Georges Rutaganda never distributed weapons and in fact saved many Tutsis after the death of the President, that he knew of no orders by the MRND to establish roadblocks or kill Tutsis, and that he had no contact with any of the accused after the death of the President.

15. The revelation of these interviews by Mr. Mudahinyuka is evidence of a serious breach of Rule 66(B) and Rule 68 by the Office of the Prosecutor. If true, significant remedial and punitive measures would be warranted, particularly in light of the prosecution's failure to heed the warnings provided by the Trial Chamber in its *Decision on Joseph Nzirorera's Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings* (11 September 2008).

16. Mr. Nzirorera will withhold further comment and hyperbole pending the prosecution's response to this motion.

17. Therefore, he respectfully requests that the prosecution be ordered to make available for inspection all information obtained by the Office of the Prosecution from Jean-Marie Vianney Mudahinyuka, and that remedial and punitive measures be ordered in proportion to the violation of Rules 66(B) and 68 ultimately established.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

