

ICTR-98-44-T
12-03-2010
(50603 - 50601)

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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: 12 March 2010

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
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2010 MAR 12 PM 12:06

JOSEPH NZIRORERA'S 29th NOTICE OF RULE 66 VIOLATION,
20th NOTICE OF RULE 68 VIOLATION, AND
MOTION FOR REMEDIAL MEASURES

The Office of the Prosecutor:

Mr. Don Webster
Mr. Saidou N'Dow
Mr. Takeh Sendze

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 hereby notifies the Trial Chamber of yet another violation of Rule 66(A)(ii) and Rule 68 by the prosecution. As set forth in the *Prosecutor's Motion to Admit Rwandan Procès Verbaux concerning GAY* (10 March 2010), the prosecution has acknowledged that it failed to disclose a prior statement of Witness GAY from 1996 which it had in its possession since 2005. That prior statement also contains inconsistencies with the testimony and other statements of Witness GAY, and was therefore also subject to disclosure pursuant to Rule 68.

2. The prosecution has also acknowledged that the statement was in its Electronic Disclosure Suite (EDS) but could not be retrieved.¹ This is now the second time since the prosecution has announced that it will rely on the EDS to meet its disclosure obligations that a document has been purportedly contained in the EDS, but could not be located by the prosecution itself.²

3. Mr. Nzirorera requests that the Trial Chamber make a specific finding of a violation of Rule 66(A)(ii) and Rule 68 with respect to the undisclosed statement of Witness GAY.

4. The prosecution explains that the violation of disclosure was inadvertent and the result of lack of coordination among its trial teams. These explanations have been rejected on many occasions by this Trial Chamber, yet the violations continue. The prosecution has been specifically ordered on several occasions to review its disclosure collection to ensure that such violations do not occur in the future.³

¹ *Motion* at para. 7

² See Transcript of 23 November 2009 @ 11 concerning letter of Aloys Karekezi, entered into EDS in 2002 and not located by prosecution team until 2009

³ 5 June 2006 @ 37; *Decision on Defence Motion for Disclosure of RPF Material and for Sanctions Against the Prosecution* (19 October 2006) at para. 17; *Decision on Joseph Nzirorera's Motion to Exclude the Testimony of Witness AMM* (15 June 2007) at para. 9

5. Given that the violations of disclosure continue unabated in this case, the Trial Chamber is once again requested to order remedial measures. Such measures, in this instance, should include an order to the prosecution to review its entire collection and to identify all prior statements and testimony of its witnesses to determine whether or not there are other materials which have not been disclosed and for the Senior Trial Attorney to certify, under penalty of perjury, that all such statements and transcripts of testimony have been disclosed.

6. As a further remedy, Mr. Nzirorera requests that Witness GAY's Rule 92 *bis* statement and her testimony be excluded. Clearly, had the 1996 statement of this witness been disclosed, the cross examination of this witness concerning her failure to allege that she had been raped prior to 1999 would have been different. Mr. Nzirorera has been irreparably prejudiced by the non-disclosure, and an appropriate remedy would be to exclude the evidence of Witness GAY in its entirety.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu
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From:	<input type="checkbox"/> Chamber (names)	<input checked="" type="checkbox"/> Defence Peter Robinson (names)	<input type="checkbox"/> Prosecutor's Office (names)
			<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Karemera et al		Case Number: ICTR-98-44-T
Dates:	Transmitted: 12 March 2010		Document's date: 12 March 2010
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<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input type="checkbox"/> Correspondence	
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II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

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Reference material is provided in annex to facilitate translation.

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CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

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