

ICTR-98-44-T
7-11-2008
(38208-38205)

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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: 7 November 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
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JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION:
ORDER TO JOSEPH NZIRORERA TO REDUCE HIS WITNESS LIST

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 moves for reconsideration of the *Order to Joseph Nzirorera to Reduce his Witness List* (24 October 2008).

2. A Trial Chamber has inherent power to reconsider its own decisions. However, reconsideration is an exceptional measure available only (1) when a new fact has been discovered that was not known to the Trial Chamber; (2) new circumstances have arisen which affect the premise of the decision; (3) where there was an error of law or the Trial Chamber abused its discretion; or (4) an injustice has been occasioned.¹

3. In its *Order*, the Trial Chamber directed Joseph Nzirorera to file his final witness list, reduced to approximately 55 witnesses fitting within 45 trial days and to file one final consolidated Rule 92 *bis* application by 7 November 2008.

4. On 6 November 2008, the Trial Chamber made an oral ruling advancing Mr. Nzirorera's defence case ahead of that of Mr. Ngirumpatse's. This is a material change in circumstances which requires reconsideration of the 24 October 2008 order.

5. By following Mr. Ngirumpatse, the defence of Mr. Nzirorera could afford to leave witnesses off of its list in expectation that Mr. Ngirumpatse would call them. Now that the order of presentation of the defence cases have been reversed, and particularly in light of the possibility that Mr. Ngirumpatse may drop out of the case or not be capable of mounting an effective defence, it is necessary that Mr. Nzirorera re-evaluate his witness list and include those witnesses he had relied upon Mr. Ngirumpatse to call. Some of those witnesses may also be suitable for Rule 92 *bis* treatment.

¹ *Prosecutor v Karemera et al*, No. ICTR-98-44-PT, *Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses* (29 August 2005) at para. 8; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure* (31 October 2005) at para. 3; *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Reconsideration of Admission of Written Statements in lieu of Oral Testimony and Admission of the Testimony of Witness GAY* (28 September 2007) at para. 10

6. Mr. Nzirorera's lead counsel is arriving in Arusha on 8 November 2008 to consult with Mr. Nzirorera and the Ngirumpatse and Karemera defence teams, and will be in a better position to make an estimate as to the number of witnesses he will need to call in his defence case, and the number of Rule 92 *bis* statements he will offer for admission, once those consultations have taken place. At that time, he will file a supplemental pleading estimating the number of witnesses he would like to call in his defence, and requesting that the *Order* be modified to allow him to call a greater number of witnesses over a longer period of time.

7. Mr. Nzirorera would be prepared to file a current request for Rule 92 *bis* statements and testimony to be admitted, but for the Trial Chamber's stipulation that no further motions would be entertained, or compensated for. Given the situation described above, it is not possible to provide a final Rule 92 *bis* motion at this time for all potential witnesses. Should the Trial Chamber reconsider its order and remove the provisions precluding further filings, Mr. Nzirorera can file what he has at the present time.

8. Therefore, Mr. Nzirorera respectfully requests that the Trial Chamber (1) await his supplemental filing and then reconsider the number of witnesses it will permit him to call and the length of time it will allow for his defence case; and (2) allow him to file his current Rule 92 *bis* motion with the understanding that additional statements or testimony could be the subject of future Rule 92 *bis* motions, and counsel can be compensated for preparing those motions.

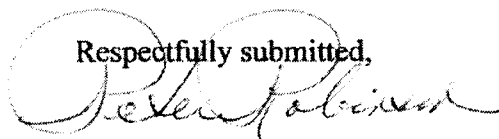
9. Meanwhile, Mr. Nzirorera urges the Trial Chamber to decide the 28 pending motions, many of which deal with potential recall of prosecution witnesses, defence

witnesses to be subpoenaed, and admission of evidence under Rule 92 *bis*, and some of which have been pending since July.

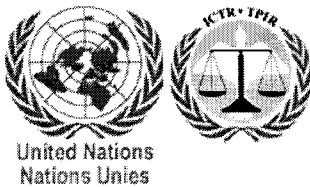
10. Failure to decide these motions is incompatible with requiring a **final** witness list and a **final** Rule 92 *bis* motion. For example, how is Mr. Nzirorera to know whether to place Fabien Bunane on his witness list when the Trial Chamber has not ruled on his motion for a subpoena to Mr. Bunane filed on 22 September and not opposed by the prosecution? How is Mr. Nzirorera to know whether to include Witness WFP1 on his witness list when the Trial Chamber has not ruled on the motion to admit his written statement filed on 18 August? How is Mr. Nzirorera to know the identity of his final witnesses when the Trial Chamber has not ruled on the motion to interview prosecution witnesses who still may have to be recalled due to disclosure violations—motions which are on file since 15 September?

11. Mr. Nzirorera means no criticism of the Trial Chamber. Its struggles to produce the written judgement in the *Nchamihigo* case and written decisions in this case are well known to be the result of insufficient resources. However, the Trial Chamber should not expect **final** pleadings until it has put in place all conditions for such final decisions to be made.

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)

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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. Joseph Nzirorera		Case Number: ICTR-98-44-T	
Dates:	Transmitted: 7 November 2008		Document's date: 7 November 2008	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	JOSEPH NZIRORERA'S MOTION FOR RECONSIDERATION: ORDER TO JOSEPH NZIRORERA TO REDUCE HIS WITNESS LIST			
Classification Level:		TRIM Document Type:		
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<input type="checkbox"/> Filing Party hereby submits BOTH the original and the translated version for filing, as follows:			
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