

ICTR-98-44-T
30-10-2008
(38145-38142)

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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: 30 October 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

JUDICIAL REGISTRY
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JOSEPH NZIRORERA'S 20th NOTICE OF VIOLATION OF RULE 66
AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES:
COLONEL FELICIEN MUBERUKA

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 Colonel Felicien Muberuka, and for remedial and punitive sanctions for the non-disclosure.

2. Colonel Felicien Muberuka was the Rwandan Army commander of the Kigali secteur during 1994. He was accused by Witness ZF of having been a member of the "Friends of the Alliance" along with Mr. Nzirorera and others which plotted to exterminate the Tutsis.¹ Witness G testified about encountering Colonel Muberuka in Gatsata secteur during the 10 April 1994 mission of the Interahamwe leaders to try to stop the killing.² Witness T also testified that members of the committee also encountered Colonel Muberuka of the Rwandan Army in Gatsata secteur.³

3. Colonel Felicien Muberuka was listed as one of Joseph Nzirorera's defence witnesses in *Joseph Nzirorera's Fifth Rule 73 ter Filing* (8 September 2008)

4. On 22 August 2008, the Trial Chamber ordered the prosecution to allow inspection of all statements made by persons on his witness list, including Felicien Muberuka.⁴ The prosecution produced that material and represented that by 27 October 2008 its Rule 66(B) disclosure would be completed.⁵ No information from Muberuka was provided.

¹ Exhibit DNZ-108, military list, number 16

² Transcript of 18 October 2005@ 35

³ Transcript of 30 May 2006 @ 21

⁴ *Decision on Joseph Nzirorera's Fourth Motion for Inspection of Defence Witness Information* (22 August 2008)

⁵ *Prosecutor's Motion for an Order pursuant to Rule 54 and Rule 73ter(D) to Reduce the Number of Witnesses being called by Joseph Nzirorera* (20 October 2008) at fn. 4

5. On 23 October 2008, lead counsel for Mr. Nzirorera interviewed Colonel Muberuka. Colonel Muberuka advised that he had been interviewed by representatives of the ICTR Office of the Prosecutor on two occasions.

6. Colonel Muberuka advised that he was interviewed in Cameroon by ICTR Office of the Prosecutor Trial Attorney Luc Cote in 1997 or 1998. Cote asked him many questions about the massacres in Kigali beginning in April 1994. Colonel Muberuka answered Cote's questions and told Cote that the Army had tried to stop the killings, but had been unable to do so. Cote asked Colonel Muberuka to be a witness against Colonel Theoneste Bagosora, who had been arrested in Cameroon at that time. However, Muberuka told him he had no information that Colonel Bagosora had committed any crimes.

7. Colonel Muberuka said that the second occasion when he was interviewed by OTP occurred in 2004 or 2005. He was interviewed over a three day period by former Rwandan Army Colonel now working for ICTR OTP and a Nigerian investigator or prosecutor. They took many notes of his interview, but he did not sign a statement. He provided information that indicated that the Army and the authorities had tried to stop the killing but were unable to do so, and that there was no plan or intention to exterminate the Tutsis.

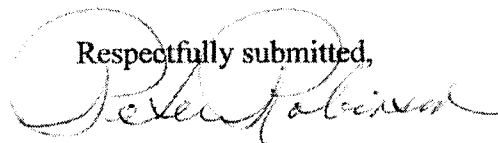
8. Colonel Muberuka advised that the OTP representatives acted as if they were not satisfied with his statements and said they wanted him to think over whether he was ready to tell them the truth. He answered that he was telling them the truth. He said that they called him back a few days later and asked him if he had changed his mind. He said no, he had been telling them the truth all along. He never heard from them again.

9. The revelation of these interviews by Colonel Muberuka is evidence of yet another 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) and its misconduct with respect to witness Jean-Marie Vianney Mudahinyuka as detailed in *Reply Brief: Joseph Nzirorera's 19th Notice of Rule 66 Violation and Motion for Remedial and Punitive Measures* (21 October 2008)

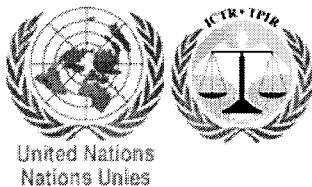
10. Mr. Nzirorera will withhold further comment and hyperbole pending the prosecution's response to this motion. However, it appears that the disclosure violations are continuing unabated.

11. Mr. Nzirorera respectfully requests that the prosecution be ordered to make available for inspection all information obtained by the Office of the Prosecution from Colonel Felicien Muberuka, 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



TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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

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Case Name:	The Prosecutor vs. Joseph Nzirorera		Case Number: ICTR-98-44-T	
Dates:	Transmitted: 30 October 2008		Document's date: 30 October 2008	
No. of Pages:	4	Original Language:	<input checked="" type="checkbox"/> English	<input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
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