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ICTR-98-44-T  
03-03-2009  
(45278-45275)

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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: 3 March 2009

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S 25<sup>th</sup> NOTICE OF VIOLATION OF RULE 66  
AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES:  
WITNESS T

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The Office of the Prosecutor:

Mr. Don Webster  
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 has uncovered yet another violation by the prosecution of its disclosure obligations under Rule 66(A)(ii). He once again moves for a finding of violation and the imposition of remedial and punitive measures.

2. Prosecution Witness T testified in May of 2006. The prosecution was required pursuant to Rule 66(A)(ii) to have provided all of his prior statements in advance of his testimony.

3. In February 2009, almost three years after the testimony of Witness T, the prosecution disclosed, for the first time, a ten page report of interview with Witness T from 16 July 1998.<sup>1</sup>

4. In the report Witness T makes serious allegations against Mr. Nzirorera of fraud and bribery. These allegations are completely false, and demonstrate that Witness T was currying favor with the ICTR Office of the Prosecutor by leveling accusations against prominent figures such as Mr. Nzirorera in the hope of saving his own skin.

5. Had this statement been disclosed to Mr. Nzirorera prior to the cross examination of Witness T, he would have used it to demonstrate that Witness T has “gilded the lily” by implicating Mr. Nzirorera in some things that he did not participate in, such as distribution of weapons on 12 April 1994, as part of his strategy of self-preservation.

6. The prosecution’s failure to disclose this 1998 report before the 2006 testimony was inexcusable and prejudicial.

7. It was all the more inexcusable because the prosecution had already been warned in connection with other disclosure violations for Witness T. In May 2006, the Trial Chamber had held that:

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<sup>1</sup> A copy of this report of interview is attached as Confidential Annex “A”.

“The Chamber is further seriously concerned by the Prosecution's management of its case with respect to the interests of justice and the rights of the Accused. Rule 46(A) of the Rules of Procedure and Evidence provides that a Chamber may, after a warning, impose sanctions against counsel if, in its opinion, his conduct remains offensive or abusive or obstructs the proceedings or is otherwise contrary to the interests of justice. In the present case, on several occasions the Chamber has voiced concerns regarding the Prosecution's disclosure obligations and its effect on the administration of justice in this trial. In particular, in the oral decision on the stay of proceedings of 16th February 2006, the Chamber strongly recommended that the Prosecution improve the management of disclosure in its case after it cited difficulties in accessing its database as the reason for failing to disclose Rule 68 material.

The Defence has asked for disclosure concerning Witness T on several occasions. The request was renewed during this trial session. The Prosecution reiterated that the disclosure was complete. Now, in the middle of the examination-in-chief of Witness T by video link, in a strict time schedule, the Prosecution states that, upon further investigation, it realised that disclosure was not, in fact, complete.

The Prosecution should have been diligent in each of the prior requests to ensure that its obligation to disclose as mandated by the rules was properly discharged. This behaviour, in the context of this case where the Chamber noted on several occasions the Prosecution's lack of diligence in disclosure matters, is completely unacceptable. This obstructs the proceedings and is contrary to the interests of justice.

Accordingly, the Chamber now imposes a warning pursuant to Rule 46(A) so that, if this behaviour continues, the Chamber will have the option to impose sanctions.”<sup>2</sup>

8. More than two years later, on 11 September 2008, after finding that the prosecution had violated Rule 68 for the thirteenth time, the Trial Chamber again held that:

“Although the Chamber is not prepared to state that the Prosecution can no longer be relied upon to discharge its Rule 68 obligations in this case, it notes that the Prosecution's compliance with the rules of disclosure has been less than adequate thus far. In fact, the Chamber

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<sup>2</sup> Transcript of 24 May 2006 at 36

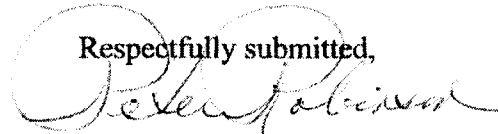
finds that the increasing number of disclosure violations by the Prosecution is quickly approaching the threshold for sanctions of a more serious nature than mere disclosure of the misconduct to an internal disciplinary body. The Chamber hereby warns the Prosecution that future disclosure violations will not be met with the same lenience that has been displayed to date.”<sup>3</sup>

9. The Trial Chamber has in fact displayed the same lenience to the prosecution when finding three additional Rule 68 violations in February 2009.<sup>4</sup> Nevertheless, Mr. Nzirorera will seek remedial and punitive measures whenever he uncovers additional violations of the prosecution’s disclosure obligations.

10. It is respectfully requested that the Trial Chamber make a finding that the prosecution’s failure to timely disclose the July 1998 interview report of Witness T constituted a violation of its Rule 66(A)(ii) obligations. The Trial Chamber is requested to impose remedial and punitive measures as a result of the violation.

11. Mr. Nzirorera may offer additional observations on what measures should be imposed once the prosecution’s explanation for the violation is known.

Respectfully submitted,



PETER ROBINSON

Lead Counsel for Joseph Nzirorera

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<sup>3</sup> *Decision on Joseph Nzirorera’s Eleventh Notice of Rule 68 Violation and Motion for Stay of Proceedings* (11 September 2008) at para. 30

<sup>4</sup> *Decision on Joseph Nzirorera’s 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Notices of Violation of Rule 68 and Motions for Remedial and Punitive Measures: ZF, Michel Bakuzakundi, and Tharcisse Renzaho* (18 February 2009)

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| <b>Case Name:</b>   | The Prosecutor vs. <b>Joseph Nzirorera</b>   |   | <b>Case Number:</b> ICTR-98-44-T  |   |
| <b>Dates:</b>   | Transmitted: <b>3 March 2009</b>   |   | Document's date: <b>3 March 2009</b>                                    |   |
| <b>No. of Pages:</b>  | <b>4</b>   | <b>Original Language:</b>   | <input checked="" type="checkbox"/> English                             | <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda                          |
| <b>Title of Document:</b>                                   | <b>JOSEPH NZIRORERA'S 25th NOTICE OF VIOLATION OF RULE 66<br/>AND MOTION FOR REMEDIAL AND PUNITIVE MEASURES:<br/>WITNESS T</b> |   |   |   |
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