

ICTR-98-44-AR91  
24-11-2008  
(21941A - 21831A)

21941A

THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA

CASE No. ICTR-98-AR91

IN THE APPEALS CHAMBER

Before: The Appeals Chamber

Registrar: Mr. Adama Dieng

Date Filed: 24 November 2008

THE PROSECUTOR

v.

JOSEPH NZIRORERA

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JOSEPH NZIRORERA'S APPEAL FROM REFUSAL  
TO INVESTIGATE PROSECUTION WITNESS  
FOR FALSE TESTIMONY

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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 hereby appeals, pursuant to Rule 91, from the Trial Chamber's *Decision on Joseph Nzirorera's Omnibus Motion on the Testimony of Ahmed Mbonnyunkiza...* (19 November 2008), in which it refused to order an investigation into the false testimony of prosecution witness Ahmed Mbonnyunkiza.

### **The False Testimony**

2. During his testimony as the first prosecution witness in Mr. Nzirorera's trial, Ahmed Mbonnyunkiza testified that during a Wednesday evening meeting in February 1992 at the MRND office in the building owned by Vedaste Rubangura:

“Mathieu Ngirumpatse spoke during that meeting and he said that the Inkotanyi were continuing to provoke him. He also spoke of members of the opposition group, in other words those who did not have the same ideology as the MRND and the *Interahamwe* in general. He we said we needed to pursue the *Inkotanyi*, we know members of the *Inkotanyi* and he said there were Tutsis who are members of the *Inkotanyi* as well as members of the opposition. He said that it was necessary that they be pursued and killed.”<sup>1</sup>

3. Mr. Mbonnyunkiza further testified in response to a question from Judge Short, concerning the same meeting that:

“Bikindi introduced a song, entitled *Tabatsembe*, Let us exterminate them, or kill them all. And it is Bikindi that introduced the song that I am referring to.”<sup>2</sup>

4. Mr. Mbonnyunkiza also testified that:

“Well, at that second meeting, it was decided that the equipment they gathered for the use of the *Interahamwe*, especially the small axes that were used to kill people, Rwandans, it was Gaspard Ukwizagira who was entrusted with that mission. And the MRND was to deliver these were small axes. They showed us a sample. These axes were very sharp.”<sup>3</sup>

5. Mr. Mbonnyunkiza's testimony was subsequently shown to be false through the testimony of five prosecution witnesses.

6. First, **Prosecution Witness G**, an officer of the National Committee of the *Interahamwe*, testified that he regularly attended the Wednesday evening meetings at the

<sup>1</sup> Transcript of 20 September 2005 at page 52

<sup>2</sup> Transcript of 20 September 2005 at page 56

<sup>3</sup> Transcript of 20 September 2005 @ page 56

MRND office in the Rubangura building beginning in November 1991.<sup>4</sup> He went every week.<sup>5</sup> He did not know Ahmed Mbonkunkiza. He testified that at weekly meetings in February, 1992, neither Mathieu Ngirumpatse nor anyone else spoke of exterminating the Tutsi.<sup>6</sup>

7. Witness G further testified that at the Wednesday meetings, Simon Bikindi never introduced a song about exterminating Tutsis.<sup>7</sup> He never saw Gaspard Uwizigara attend any of the Interahamwe meetings, nor did he see anyone display an axe or offer to supply large quantities of axes during the Interahamwe meetings.<sup>8</sup>

8. Second, **Prosecution Witness UB** testified that he was a member of the MRND Kigali ville prefectural committee and regularly attended Wednesday night meetings at the MRND office in the Rubangura building during January-April 1992.<sup>9</sup> He testified there was never an occasion during that period when Ngirumpatse made statements calling for the extermination of the Tutsi. Tutsis were even members of the Interahamwe at that time.<sup>10</sup> Ngirumpatse could not and did not make such a statement. Most members of MRND in Kigali at that time were Tutsis.<sup>11</sup> He also testified that the Interahamwe did not acquire axes at this time.<sup>12</sup>

9. Third, **Prosecution Witness T**, another member of the national Interahamwe committee, and a person specifically listed by Mbonkunkiza as having attended the meetings in question, testified that he regularly attended the Wednesday night meetings of the Interahamwe at the MRND offices in the Rubangura building during the February 1992 period. He further testified that Mathieu Ngirumpatse never made any statements calling for the extermination of the Tutsi, that Simon Bikindi never attended any of the meetings, that there was no song calling for extermination of Tutsis introduced at the meetings, and that there were no axes displayed or ordered for the Interahamwe.<sup>13</sup>

<sup>4</sup> Transcript of 14 October 2005 @ page 16

<sup>5</sup> Transcript of 28 October 2005 @ page 23

<sup>6</sup> Transcript of 14 October 2005 @ page 16

<sup>7</sup> Transcript of 14 October 2005 @ page 18

<sup>8</sup> Transcript of 14 October 2005 @ page 19

<sup>9</sup> Transcript of 1 March 2006 at pages 31-32

<sup>10</sup> Transcript of 1 March 2006 @ page 33

<sup>11</sup> Transcript of 1 March 2006 @ page 36

<sup>12</sup> Transcript of 1 March 2006 @ pages 34-35

<sup>13</sup> Transcript of 26 May 2006 @ pages 37-38

10. Fourth, **Prosecution Witness ALG**, an MRND leader in Kigali prefecture, testified that he attended Wednesday night meetings of the MRND Kigali prefecture committee in January and February 1992 at which Ngirumpatse had introduced Kajuga and Turatsinze as leaders of the Interahamwe. Ngirumpatse did not call for extermination of the Tutsis.<sup>14</sup> There was no discussion about the Interahamwe acquiring axes. It was not necessary for persons to undergo military training to join the Interahamwe. Witness ALG did not know Ahmed Mbonkunkiza and did not know of a plot to kill him.<sup>15</sup>

11. Fifth, **Prosecution Witness AWD**, an MRND leader at the commune level in Kigali, who had been listed by Mbonkunkiza as having attended the meetings, testified that he never attended any meetings at the Rubangura building at which the Interahamwe were introduced.<sup>16</sup> He also testified that had never been in a meeting with the list of people who Ahmed Mbonkunkiza said he had attended a meeting with.<sup>17</sup> He did not know Ahmed Mbonkunkiza.<sup>18</sup>

12. The defence indicated to the Trial Chamber that it had information from 13 additional witnesses who Mbonkunkiza claimed were in attendance at these meetings who would categorically refute the testimony of Mr. Mbonkunkiza.<sup>19</sup>

#### **The Proceedings in the Trial Chamber**

13. Mr. Nzirorera made several attempts to convince the Trial Chamber to order an investigation into the false testimony of Ahmed Mbonkunkiza.

14. After Prosecution Witness G refuted Mbonkunkiza's testimony, Mr. Nzirorera made a motion requesting that the Trial Chamber authorize an investigation into the false testimony of Mr. Mbonkunkiza pursuant to Rule 91. The Trial Chamber denied the motion, saying only that:

We deny the motion. It's impossible for us to initiate the proceedings under Rule 91(B) every time there is a contradiction of testimony, and we think that the motion is premature and that other things need to be done before we could be justified in embarking upon this procedure.<sup>20</sup>

<sup>14</sup> Transcript of 2 November 2006 @ 22

<sup>15</sup> Transcript of 2 November 2006 @ 23

<sup>16</sup> Transcript of 8 November 2007 @ 53

<sup>17</sup> Transcript of 8 November 2007 @ 53: Exhibit DNZ-4

<sup>18</sup> Transcript of 8 November 2007 @ 54

<sup>19</sup> *Joseph Nzirorera's Omnibus Motion on the Testimony of Ahmed Mbonkunkiza* (10 September 2008) at para. 14

<sup>20</sup> Transcript of 14 October 2005 @ 21

15. After the second prosecution witness, Witness UB, refuted Mbonkunkiza's testimony, Mr. Nzirorera made another motion requesting the Trial Chamber to authorize an investigation into the false testimony of Mr. Mbonkunkiza pursuant to Rule 91. The Trial Chamber ruled that:

We have taken note of your motion. We don't give a decision at this point in time.<sup>21</sup>

16. After the third prosecution witness, Witness T, refuted Mbonkunkiza's testimony, Mr. Nzirorera made a written *Motion for Investigation of Ahmed Mbonkunkiza for False Testimony* (29 May 2006). He supplemented that motion when Prosecution Witness ALG became the fourth prosecution witness to refute Mbonkunkiza's testimony.<sup>22</sup> The Trial Chamber denied this motion as well, holding that "contradictory evidence between witness' testimonies is insufficient evidence to demonstrate that a witness intended to mislead the Chamber and to cause harm."<sup>23</sup>

17. On 10 September 2008, after a fifth prosecution witness had refuted Mbonkunkiza's testimony, and 13 defence witnesses had been lined up to refute it as well, Mr. Nzirorera filed *Joseph Nzirorera's Omnibus Motion on the Testimony of Ahmed Mbonkunkiza*. In the motion, he sought a ruling that he had "no case to answer" as to the allegations by Mbonkunkiza, and renewed his request that the Trial Chamber order an investigation of Mbonkunkiza for false testimony.

18. On 19 November 2008, the Trial Chamber issued its *Decision on Joseph Nzirorera's Omnibus Motion on the Testimony of Ahmed Mbonkunkiza...* (the "Impugned Decision"). The Trial Chamber repeated its previous view that "conflicting testimony does not suffice to demonstrate that a contradicted witness has given false testimony."<sup>24</sup>

19. Mr. Nzirorera had contended that the ICTY Appeals Chamber's recent decision in the *Seselj* case warranted reconsideration of the Trial Chamber's high burden of demonstrating a witness' intent when considering the initiation of an investigation.<sup>25</sup>

<sup>21</sup> Transcript of 1 March 2006 @ 38

<sup>22</sup> Transcript of 2 November 2006 @ 23, 36.

<sup>23</sup> *Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonkunkiza for False Testimony* (29 December 2006) at para. 7

<sup>24</sup> Impugned Decision at para. 12

<sup>25</sup> *Prosecutor v Seselj*, No. IT-03-67-AR77.2, *Decision on the Prosecution's Appeal Against the Trial Chamber's Decision of 10 June 2008* (25 July 2008)

The Trial Chamber disagreed, holding that the *Seselj* decision, concerning contempt under Rule 77, was inapplicable to false testimony under Rule 91.<sup>26</sup> The Trial Chamber went on to sanction defence counsel for raising this issue labeling it as “frivolous”.<sup>27</sup>

20. Mr. Nzirorera now timely appeals from that decision.

### **The Right to Appeal**

21. Mr. Nzirorera brings this appeal of right pursuant to Rule 91(I). Rule 91 provides that:

- (A) A Chamber, *proprio motu* or at the request of a party, may warn a witness of the duty to tell the truth and the consequences that may result from a failure to do so.
- (B) If a Chamber has strong grounds for believing that a witness has knowingly and wilfully given false testimony, it may:
  - (i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for false testimony; or
  - (ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating proceedings for false testimony.
- (C) If the Chamber considers that there are sufficient grounds to proceed against a person for giving false testimony, the Chamber may:
  - (i) in circumstances described in paragraph (B) (i), direct the Prosecutor to prosecute the matter; or
  - (ii) in circumstances described in paragraph (B) (ii), issue an order in lieu of an indictment and direct *amicus curiae* to prosecute the matter.
- (D) The Rules of Procedure and Evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.
- (E) Any person indicted for or charged with false testimony shall, if that person satisfies the criteria for determination of indigence established by the Registrar, be assigned counsel in accordance with Rule 45.

<sup>26</sup> Impugned Decision at para. 13

<sup>27</sup> Impugned Decision at para. 14

- (F) No Judge who sat as a member of the Trial Chamber before which the witness appeared shall sit for the trial of the witness for false testimony.
- (G) The maximum penalty for false testimony under solemn declaration shall be a fine of USD10, 000 or a term of imprisonment of five years, or both. The payment of any fine imposed shall be paid to the Registrar to be held in the account referred to in Rule 77 (H).
- (H) Paragraphs (B) to (G) apply *mutatis mutandis* to a person who knowingly and willingly makes a false statement in a written statement taken in accordance with Rule 92 *bis* which the person knows or has reason to know may be used as evidence in proceedings before the Tribunal.
- (I) Any decision rendered by a Trial Chamber under this Rule shall be subject to appeal. Notice of appeal shall be filed within fifteen days of filing of the impugned decision. Where such decision is rendered orally, the notice shall be filed within fifteen days of the oral decision, unless:
  - (i) the party challenging the decision was not present or represented when the decision was pronounced, in which case the time-limit shall run from the date on which the challenging party is notified of the oral decision; or
  - (ii) the Trial Chamber has indicated that a written decision will follow, in which case the time-limit shall run from filing of the written decision.

22. In the *Seselj* decision, the Appeals Chamber determined that a prosecution appeal of a Trial Chamber's refusal to initiate an investigation for contempt proceedings pursuant to Rule 77 was admissible. It said that:

The Appeals Chamber considers that a decision dismissing a request to initiate contempt proceedings is a decision disposing of the contempt case within the meaning of Rule 77(J) of the Rules. The Appeals Chamber notes that, in the Impugned Decision, the Trial Chamber held that sufficient grounds did not exist to initiate contempt proceedings against Vucic, which in effect dismissed the Prosecution Request to initiate contempt proceedings. The Appeals Chamber accordingly finds that an appeal of right lies from the Impugned decision pursuant to Rule 77(J).<sup>28</sup>

23. ICTY Rule 77 contains a virtually identical scheme as Rule 91. A Chamber may order an investigation by the prosecutor or amicus curiae when it has reason to

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<sup>28</sup> *Prosecutor v Seselj*, No. IT-03-67-AR77.2, *Decision on the Prosecution's Appeal Against the Trial Chamber's Decision of 10 June 2008* (25 July 2008) at para. 12

believe that a person may be in contempt of the Tribunal.<sup>29</sup> A prosecution can be initiated by the person directed to conduct the investigation or the Chamber itself.<sup>30</sup> If such a prosecution is initiated, the Rules of Procedure and Evidence apply<sup>31</sup>, counsel may be appointed to represent the accused person<sup>32</sup>, the punishment is up to 7 years imprisonment and a 100,000 Euro fine<sup>33</sup>, and “any decision rendered by the Trial Chamber under this rule shall be subject to appeal.”<sup>34</sup>

24. Therefore, Mr. Nzirorera contends that his appeal of the Trial Chamber’s refusal to initiate an investigation for false testimony of Ahmed Mbonkunkiza, like the appeal of the prosecution in *Seselj*, is admissible. In the Impugned Decision, the Trial Chamber held that sufficient grounds did not exist to initiate false testimony proceedings against Mbonkunkiza, which in effect dismissed Mr. Nzirorera’s request to initiate such proceedings.

25. The Appeals Chamber also considered that “a party in proceedings before the International Tribunal has the right to request the Trial Chamber to exercise its discretionary power to initiate contempt proceedings for alleged conduct that would harm that party’s right to a fair trial.”<sup>35</sup> Likewise, a party who is the victim of false testimony has the right to request the Trial Chamber to exercise its discretion to investigate false testimony. Mr. Nzirorera has repeatedly contended that the Trial Chamber’s refusal to initiate investigations into false testimony has provided prosecution witnesses a license to lie in his case, violating his right to a fair trial.<sup>36</sup>

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<sup>29</sup> Rule 77(C)

<sup>30</sup> Rule 77(D)

<sup>31</sup> Rule 77(E)

<sup>32</sup> Rule 77(F)

<sup>33</sup> Rule 77(G)

<sup>34</sup> Rule 77(J)

<sup>35</sup> *Seselj* at para. 13

<sup>36</sup> *Motion for Investigation of Ahmed Mbonkunkiza for False Testimony* (29 May 2006) at para. 18; *Joseph Nzirorera’s Motion for Appointment of Amicus Curiae: Ngirumpatse Letters* (2 July 2007) at para. 18; *Joseph Nzirorera’s Motion for Investigation of Witness HH for False Testimony* (30 July 2007)

## Grounds of Appeal

26. Mr. Nzirorera raises the following grounds of appeal:

- (A) The Trial Chamber made the same error as the Trial Chamber in *Seselj* by imposing too high a burden of establishing intent;
- (B) The Trial Chamber erred in holding that “conflicting testimony does not suffice to demonstrate that a contradicted witness has given false testimony.”
- (C) The Trial Chamber erred in imposing sanctions upon defence counsel for what was, in fact, a meritorious motion.

## Standard of Review

27. The Appeals Chamber in *Seselj* held that the right to appeal under Rule 77(J) allowed the prosecution to seek review of the Trial Chamber’s decision on the grounds that there was an incorrect application of the legal standard governing such requests.<sup>37</sup> Therefore, Mr. Nzirorera contends that the standard of review of an appeal under Rule 91(I) is whether the Trial Chamber applied an incorrect legal standard in refusing to initiate an investigation for false testimony.

## Argument

### **The Trial Chamber Applied an Incorrect Legal Standard by Requiring a High Burden of Proof of Intent**

28. In the *Seselj* decision, the Appeals Chamber held that the Trial Chamber applied an incorrect legal standard when concluding that the mental element of contempt had not been established, as it would have to be proven that the alleged contemnor had knowledge of the protected status of the witness. The Appeals Chamber held that the “sufficient grounds” standard of Rule 77(D) requires the Trial Chamber only to establish whether the evidence before it gives rise to a *prima facie* case of contempt of the Tribunal and not to make a finding that contempt has been committed.<sup>38</sup>

29. The Trial Chamber in Mr. Nzirorera’s case made the same error as the Trial Chamber in *Seselj*. It held that “contradictory evidence between witness’ testimonies is

<sup>37</sup> *Seselj* at para. 13

<sup>38</sup> *Prosecutor v Seselj*, No. IT-03-67-AR77.2, *Decision on the Prosecution’s Appeal Against the Trial Chamber’s Decision of 10 June 2008* (25 July 2008) at para.16

insufficient evidence to demonstrate that a witness intended to mislead the Chamber and to cause harm”<sup>39</sup>, and that “conflicting testimony does not suffice to demonstrate that a contradicted witness has given false testimony.”<sup>40</sup> Had it applied the correct standard, it could only have concluded that a *prima facie* case for false testimony had been made out against Ahmed Mbonnyunkiza.

30. The situation before the Trial Chamber in Mr. Nzirorera’s case warranted even a lower threshold than that in *Seselj*, since the issue involved only whether to commence an investigation, rather than the more serious step of initiating contempt proceedings themselves. Therefore, the Trial Chamber erred in requiring a high standard of proof of intent to mislead the Chamber or cause harm.

31. The false accusations by Mr. Mbonnyunkiza that co-accused and alleged JCE member Mathieu Ngirumpatse called for the extermination of the Tutsi at MRND party meetings certainly satisfy the *prima facie* standard, since they were made at Mr. Ngirumpatse’s trial and contain allegations which, if true, go directly to prove the charge in the indictment that the three accused were members of a joint criminal enterprise to exterminate the Tutsi.

32. Therefore, the Appeals Chamber should find that the Trial Chamber applied an erroneous legal standard when requiring a high standard of proof of intent to mislead the Chamber and to cause harm.

**The Trial Chamber Erred in Holding That Contradictory Evidence is not Sufficient for an Investigation**

33. Mr. Mbonnyunkiza’s testimony concerning MRND meetings at which Mathieu Ngirumpatse called for the extermination of the Tutsi was contradicted by testimony of five of the prosecution’s own witnesses, two of whom Mbonnyunkiza testified were present at that meeting. Since a conviction of Mr. Mbonnyunkiza for giving false testimony could be based upon the uncorroborated testimony of a single witness, if believed beyond a reasonable doubt,<sup>41</sup> it is simply not logical to conclude that the

<sup>39</sup> *Decision on Defence Motion for Investigation of Prosecution Witness Ahmed Mbonnyunkiza for False Testimony* (29 December 2006) at para. 7

<sup>40</sup> *Impugned Decision* at para. 12

<sup>41</sup> *Prosecutor v Kajelijeli*, No. ICTR-98-44A-T, *Judgment and Sentence* (1 December 2003) at para. 41; *Prosecutor v Akayesu*, No. ICTR-96-4-T, *Judgment* (2 September 1998) at para. 135; *Prosecutor v*

testimony of five witnesses is insufficient to constitute strong grounds for believing that Mr. Mbonkiza's testimony was false.

34. The Trial Chamber's ban on considering contradictory evidence in determining whether there are strong grounds for believing that a witness has given false testimony makes no sense, since it is contradictory evidence which has been the basis for many of its own decisions on the credibility of witnesses in judgements it has rendered.<sup>42</sup> It is also against the public interest because it allows for prosecution of only those who confess to having given false testimony. Indeed the only investigations authorized by Chambers at the ICTR pursuant to Rule 91 have been where the witness recanted his earlier testimony and confessed to having given false testimony.<sup>43</sup>

35. Investigating only those who confess and recant, and allowing others to lie with impunity, encourages those who have lied to remain steadfast in their denials, while deterring those who are ready to come forward and tell the truth. This turns the search for truth and justice on its head. By excluding contradictory evidence as a source of proof of false testimony, the Trial Chamber applied an incorrect legal standard. Its decision to refuse to order an investigation of Ahmed Mbonkiza should be reversed.

**The Trial Chamber Erred in Determining the Motion to be "Frivolous"**

36. The Appeals Chamber has held that sanctions on counsel pursuant to Rule 73(F) must be imposed cautiously.<sup>44</sup>

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*Nahimana et al*, No. ICTR-99-52-T, *Judgement and Sentence* (3 December 2003) at para. 97; *Gacumbitsi v Prosecutor*, No. ICTR-2001-64-A, *Judgement* (7 July 2006) at para.72

<sup>42</sup> *Prosecutor v Rwamakuba*, No. ICTR-98-44C-T, *Judgement* (20 September 2006); *Prosecutor v Nchamahigo*, No. ICTR-01-63-T, *Judgement and Sentence* (12 November 2008)

<sup>43</sup> *Kamuhanda v Prosecutor*, No. ICTR-99-54A-A, *Oral Decision (Rule 115 and Contempt for False Testimony)* (19 May 2005) (Witness GAA); *Prosecutor v Karemera et al*, No. ICTR-98-44-T, *Decision on Prosecutor's Confidential Motion to Investigate Witness BTH for False Testimony* (14 May 2008) (Witness BTH); *Prosecutor v Bizimungu et al*, No. ICTR-99-50-T, *Decision on Defence Motion Seeking the Appointment of Amicus Curiae to Investigate Possible False Testimony by Witnesses GFA, GKB, and GAP* (23 July 2008)(Witness GFA); *Prosecutor v Nyiramasuhuko et al*, No. ICTR-98-42-T, *Decision on Ntahobali's Motion for an Investigation Relative to False Testimony and Contempt of Court* (7 November 2008) (Witness TQ)

<sup>44</sup> *Karemera & Nzirorera v Prosecutor*, No. ICTR-98-44-AR73.4, *Decision on Interlocutory Appeals Regarding Participation of Ad Litem Judges* (11 June 2004); *Prosecutor v Karemera et al*, No. ICTR-98-44-PT, *Decision on Motion to Vacate Sanctions* (23 February 2005) at para. 6; *Prosecutor v. Kanyarukiga*, No. ICTR-2002-78-AR11bis, *Decision on the Request to Admit Additional Evidence of 1 August 2008* (1 September 2008) at para. 11; *Karera v Prosecutor*, No. ICTR-01-74-A, *Decision on the Appellant's Request to Admit Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence* (29 October 2008) at para. 14

37. Should the Appeals Chamber find that the arguments of Mr. Nzirorera in this appeal are meritorious, it is only fair that in reversing the decision of the Trial Chamber, it reverse the imposition of sanctions as well. The arguments could hardly be deemed frivolous if the Appeals Chamber agrees with them.

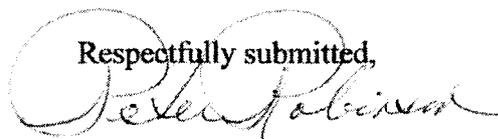
38. While the Appeals Chamber has held that sanctions, in and of themselves, cannot be appealed,<sup>45</sup> its power to make orders ancillary to its decision on the merits can be exercised to reverse the sanctions imposed in this case. To fail to do so would be to create an oxymoron--a meritorious appeal based on a frivolous motion.

### **Conclusion**

39. The Trial Chamber applied two incorrect legal standards in refusing to order an investigation into the false testimony of Prosecution Witness Ahmed Mbonnyunkiza. It also erroneously deemed meritorious arguments to be frivolous. The Appeals Chamber is respectfully requested to reverse the decision of the Trial Chamber in all respects.

Word count: 3955

Respectfully submitted,

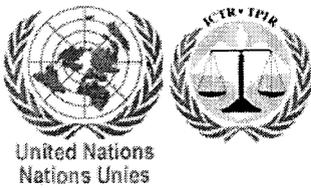


PETER ROBINSON

Lead Counsel for Joseph Nzirorera

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<sup>45</sup> *Nzirorera v Prosecutor*, No. ICTR-98-44-AR73(F), *Decision on Counsel's Appeal from Rule 73(F) Decisions* (9 June 2004)



# TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

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

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Trial Chamber III A. N'Gum
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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>23 November 2008</b>		Document's date: <b>24 November 2008</b>	
<b>No. of Pages:</b>	<b>12</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 APPEAL FROM REFUSAL TO INVESTIGATE PROSECUTION WITNESS FOR FALSE TESTIMONY</b>			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Ex Parte		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Notice of Appeal
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**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

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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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**INTERLOCUTORY APPEALS - PROOF OF SERVICE – BY FAX  
PREUVE DE NOTIFICATION - CHAMBRE D'APPEL – PAR FAX**

Date: <b>24/11/2008</b>		Case Name / affaire: <b>- Edouard KAREMERA - Joseph NZIRORERA - Mathieu NGIRUMPATSE</b>	
		Case No / no. de l'affaire: <b>ICTR-98-44-A</b>	
To: A:	Appeals Chamber Support Unit, The Hague:		<input type="checkbox"/> Judge / <input type="checkbox"/> Judge / <input type="checkbox"/> Judge / <input type="checkbox"/> Judge / <input type="checkbox"/> Judge /
	- Mr. Koffi Afande - Mr. Patrice Tchidimbo - Mr. Ramadhani T. Juma		
<b>ACCUSED / DEFENSE</b> <input checked="" type="checkbox"/> Accused / <i>Accusé</i> <b>KAREMERA, NGIRUMPATSE, NZIRORERA</b> <small>see / voir * CMS4</small> <input checked="" type="checkbox"/> Lead Counsel / <i>Conseil Principal</i> : <b>D. Diagne, C. Hounkpatin, P. Robinson</b> <input type="checkbox"/> In Arusha / à Arusha: <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax: <input type="checkbox"/> Co-Counsel / <i>Conseil Adjoint</i> : <b>F. Sow, F. Weyl, P. Ngimbi</b> <input type="checkbox"/> Arusha <small>(see / voir CMS3)</small> <input type="checkbox"/> Fax:			
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From: De:	<input type="checkbox"/> JP. Fomété (Chief, CMS) <input type="checkbox"/> Matar Diop (Chief, JPU) <input checked="" type="checkbox"/> <b>C. Hometownu (TC III)</b> <input type="checkbox"/> F. A. Talon (Appeals/Team IV)		
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CC:	<input checked="" type="checkbox"/> Registrar <input type="checkbox"/> Deputy Registrar <input type="checkbox"/> Press <input checked="" type="checkbox"/> ICTR Spokesperson <input checked="" type="checkbox"/> SAR <input type="checkbox"/> WVSS <input type="checkbox"/> DCDMS <input checked="" type="checkbox"/> CSS <input checked="" type="checkbox"/> SADR <input type="checkbox"/> Other		
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