

ICTR  
CRIMINAL REGISTRY  
THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA  
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1998 AUG 12 P 3 04  
CASE NO.: ICTR-98-38-DP

THE PROSECUTOR  
OF THE TRIBUNAL

AGAINST

JOSEPH NZIRORERA

10 AUGUST 1998  
0930

Before: Mr. Justice Laity Kama, President

Courtroom Assistant:

Mr. Edward E. Matemanga

Registrar: Mr. Dr. Mindua

For the Prosecution:

Mr. James Stewart

For the Defendant Nzirodera:

Mr. Frederick Kinabo

Court Reporters:

Haruna Farage

Judith Katapamoyo

HARUNA FARAGE, OFFICIAL REPORTER  
ICTR CHAMBER I

P R O C E E D I N G S  
Motion  
10 August 1998

0930

MR. PRESIDENT:

The session is called to order.  
We shall now move to the matter  
concerning the Prosecutor of the Tribunal  
against Joseph Nzirorera. Please  
assuring the suspect, Mr. Joseph  
Nzirorera. The Registry, could you  
please indicate what is before the  
Tribunal.

MR. MINDUA:

Thank you, Mr. President.  
My colleague will take the floor on  
behalf of the Registry.

MS. SALIMO:

Mr. President, the third case before the  
Tribunal today 10th August 1998 for the  
International Criminal Tribunal for  
Rwanda is Case ICTR-98-38-DP, the  
Prosecutor of this International Tribunal  
against Joseph Nzirorera. The Tribunal

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1 is currently sitting in public hearing in  
2 the above mentioned case in the person of  
3 Judge Laity Kama for the consideration of  
4 the request made by the prosecutor for an  
5 order for an extension of a provisional  
6 detention of the suspect, Joseph  
7 Nzirorera under Article 40 bis F of the  
8 Rules of Procedure and Evidence of the  
9 Tribunal. I thank you, Mr. President.

10 MR. PRESIDENT:

11 Thank you ma'am.  
12 It is necessary to indicate to the  
13 Registry that here, we are dealing with  
14 the order, request for an order for an  
15 extension of the provisional detention of  
16 Joseph Nzirorera under Article-- Rule 40  
17 bis F. Mr. Prosecutor, I wish to give  
18 you the floor so that you can indicate to  
19 us the reasons on which you are basing  
20 this request for the extension.

21

22 (PAGES 1 TO 3 REPORTED BY H. FARAGE)

23

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25

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Nziorerera

1 Time: 1100 hours

2 continued hearing

3 MR. STEWART:

4 Thank you, Mr. President. Mr. Nziorerera  
5 was Executive Secretary of the MRND and  
6 this was before and during events of 1994  
7 in Rwanda. If I were to base myself on  
8 the affidavits filed by Mr. Maxwell Nkole  
9 on Rule 40 Bis (f) the grounds for our  
10 request are as follows: First of all  
11 the complexity of the investigations  
12 against this suspect which are mentioned  
13 in paragraph 5, 7 and 8 and I  
14 particularly draw your attention to  
15 paragraph 8 of Mr. Nkole's affidavit then  
16 there is the need to analyse the whole  
17 set of documents and unfortunately once  
18 again the precarious security situation  
19 obtaining in Rwanda. These are elements  
20 which are mentioned in the affidavit and  
21 on which I am basing my request. Once  
22 again the work which has to be done in  
23 regard to Mr. Joseph Nziorerera did begin  
24 even before his arrest in Benin and his  
25 transfer here to the Tribunal and the

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Nzirodera

1 time necessary to conclude this  
2 investigation and to complete the drawing  
3 up of the indictment which is the basis  
4 of our request for an extension of the  
5 provisional detention for a further 30  
6 days. I would wish to make a small  
7 clarification Mr. President. I don't know  
8 if the suspect will mention this as I  
9 have done the two others who came before  
10 him but towards the end of the month of  
11 May under the request made pursuant to  
12 rule 40, there was need for an  
13 indictment. At that point in time we  
14 were thinking of an indictment which  
15 included 29 accused which was presented  
16 to the Judge but the Judge found that  
17 there was no jurisdiction and at the  
18 office of the Prosecutor we had to  
19 renounce that decision and it was only on  
20 the 8th or the 9th of June that the  
21 chamber of appeals rendered this decision  
22 to say that there was no competence for  
23 the chamber to hear appeals. So this  
24 forced us obviously to go back and look  
25 at other means and ways of carrying out

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Nzirodera

1 our duties. I am mentioning this  
2 explanation because twice already there  
3 has been a sentence which is referred to  
4 in the documents. And once again I would  
5 respectfully submit that we need to be a  
6 bit careful of claims of this kind  
7 without there being any response from our  
8 part because I am not aware whether we  
9 can agree with the description of the  
10 events which are being submitted by  
11 persons before the court to day. In any  
12 case this is a clarification I am making  
13 and obviously the situation is quite  
14 different now and we are here now dealing  
15 with a new indictment based on  
16 investigations and the difficulties which  
17 we are faced with are described in Mr.  
18 Nkole's affidavit which I am using in  
19 order to justify the basis for our  
20 request.

21 MR. PRESIDENT:

22 Mr. Prosecutor before giving the floor to  
23 the defence I wish to inform you that the  
24 suspects are indeed of good faith when  
25 they say that at the time of their arrest

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Nziropera

1                   it was well indeed said that a procedure  
2                   of the confirmation of an indictment  
3                   concerning them was on going. They were  
4                   not told that a collective indictment  
5                   including 29 persons was being  
6                   considered. So it is in good faith that  
7                   they are raising these issues and it is  
8                   also good for you to have made the  
9                   clarification. I think we are all doing  
10                  this in good faith because they were not  
11                  aware that they were involved in the  
12                  indictment. Now having dealt with that  
13                  counsel you have the floor. Counsel for  
14                  the defence. Mr. Fredrick Kinabo is that  
15                  yourself? Could you please introduce  
16                  yourself.

17   MR. KINABO:

18                   My name is Fredrick Kinabo advocate,  
19                   Tanzania Bar.

20   MR. PRESIDENT:

21                   You have the floor sir.

22   MR. KINABO:

23                   For the request by the prosecutor to  
24                   succeed special circumstances must be  
25                   proved. The same can only be proved by

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Nzirorera

1 evidence in support of his request. The  
2 Prosecutor is relying on the affidavit of  
3 the investigator. The contents of the  
4 document will tend to support the  
5 request. However, the document itself is  
6 wanting in form. It is supposed to be an  
7 affidavit but the document was not formed  
8 before any authority competent to  
9 administer an oath. In having said that  
10 we have no objection to the request being  
11 granted.

12 MR. PRESIDENT:

13 Mr. Joseph Nzirorera had you already met  
14 your counsel before to day's hearing?

15 THE SUSPECT:

16 I am just seeing him now Mr. President.

17 MR. PRESIDENT:

18 Did you meet him or not?

19 THE SUSPECT:

20 No, not at all.

21 MR. PRESIDENT:

22 Therefore, if you have any observations  
23 any further observations you may do so.

24 THE SUSPECT:

25 Yes, I wish to take the floor Mr.

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ICTR - CHAMBER II



Nzirorera

1 President.

2 MR. PRESIDENT:

3 But only on the proceedings concerning  
4 the extension. We will not deal with the  
5 other issues because that might be dealt  
6 with in another motion from your counsel.

7 THE SUSPECT:

8 Yes, I have a small contribution to make  
9 on that Mr. President.

10 MR. PRESIDENT:

11 Please go ahead.

12 THE SUSPECT:

13 Mr. President, I thank you.

14 Mr. President Rule 40 Bis of the Rules  
15 under paragraph (f) stipulates and I  
16 quote " at the end of the period of  
17 detention at the Prosecutor's request  
18 indicating the grounds upon which it is  
19 made and if warranted by the needs of the  
20 investigations the Judge who made the  
21 initial order or another Judge of the  
22 same trial chamber may decide subsequent  
23 to an inter-party's hearing to extend the  
24 detention for a period not exceeding 30  
25 days. Mr. President, it is around this

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Nzirodera

1 paragraph that my contribution will  
2 dwell. However, I wish to inform you  
3 that since I am ignorant of legal matters  
4 I shall only deal with some reflections  
5 based on logic and what I have noticed so  
6 far because we are here dealing with an  
7 inter-party's hearing while hoping some  
8 others have said things which are more  
9 professional. Allow me therefore, Mr.  
10 President first of all to go back in the  
11 matter we are concerned with to day.  
12 When I was arrested in Benin Cotonou by  
13 the investigators of the Tribunal  
14 supported by the Beninia police my first  
15 question was to find out whether there  
16 was an indictment and who had issued the  
17 same and over and above that I wanted to  
18 know if there was an indictment or  
19 indictments against myself. My question  
20 remained without answer but simply the  
21 investigators informed me that the  
22 charges against me would be communicated  
23 to me within a 30 day period following my  
24 arrest. Mr. President, despite the fact  
25 that I was not satisfied with that

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ICTR - CHAMBER II

Nzirorera

1 response I however, accepted without any  
2 hesitation to be subject to the  
3 questioning. I was a subject of without  
4 counsel because at that time I was a  
5 suspect and I preferred not to keep quite  
6 but to momentarily renounce the right  
7 that I have to counsel so that I could  
8 answer questions put to me. Now,  
9 Mr. President it was only on the 10 of  
10 July 1998 at the time when I was being  
11 handed over from the authorities of the  
12 government of Benin and the ICTR in other  
13 words after 35 days of detention that at  
14 the Cotonou airport itself a copy of the  
15 order for transfer dated 26 June 1998 and  
16 at that moment I was able to become aware  
17 of the letter of 26 May 1998 addressed to  
18 the Minister of Justice and the keeper of  
19 the seals in the republic of Benin by Mr.  
20 Bernard Muna, the Deputy Prosecutor  
21 asking the government of Benin to proceed  
22 with my arrest and to put me under  
23 provisional detention because it would  
24 seem I was a suspect. Now Mr. President,  
25 the statute of the Tribunal at Article 17

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Nziropera

1 paragraph four and Article 18 paragraph  
2 two speak of the manner in which an  
3 arrest should be operated. Namely by the  
4 Prosecution providing an indictment in  
5 due form in which he concisely lays out  
6 the facts and the crimes alleged against  
7 the accused. The same Articles indicate  
8 the procedure to be followed through the  
9 Judges of a trial chamber in order to  
10 come to the confirmation of a Judge. Now  
11 the question that I have now is whether  
12 this letter from the Prosecutor was  
13 replacing this whole procedure as is  
14 described in the statute or whether it  
15 was in violation of these Articles that  
16 the letter was issued by the Prosecutor.  
17 The response is quite clear. For me I  
18 consider it a flagrant violation of the  
19 statute of the International Tribunal by  
20 the Prosecutor herself. And this is why  
21 Mr. President with all due respect I  
22 consider that Rule 40 of the Rules  
23 concerning provisional measures  
24 sub-paragraph (a) cannot be used because  
25 this is much more strong than the Rules

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ICTR - CHAMBER II

Nzitorera

1 which is only a moderate for the  
2 application of the statute. So no  
3 measure in the Rules can go against the  
4 provisions of the statute. Now let us  
5 come to the letter by the Deputy  
6 Prosecutor Mr. Muna. It is said in fine  
7 and I quote, that there is against this  
8 person in other words myself there are  
9 serious indications which are concordant  
10 participation in crimes committed in  
11 Rwanda between the 1st of January and the  
12 31 December 1994. He continues by saying  
13 that in fact the Prosecutor of the  
14 Tribunal possesses evidence which  
15 establish that the above mentioned, in  
16 other words Joseph Nzitorera allegedly  
17 committed crimes under the jurisdiction  
18 of the Tribunal and I quote " conspiracy  
19 to commit genocide, genocide and  
20 complicity in genocide" and I end the  
21 quotation there. The text which I have  
22 just quoted from the prosecutor should  
23 not be taken lightly and therefore,  
24 should not be considered as simply mere  
25 words. It requires the full attention

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Nziorerera

1 and in fact after receiving such a letter  
2 from an officer of the Prosecution. It  
3 is disgusting even to learn to day that  
4 the same Prosecutor because he does not  
5 have any elements against the suspect  
6 that I am, he is asking an extension to  
7 about 60 days from the time he wrote the  
8 letter. What became of the serious  
9 indications which are referred to in this  
10 letter. Mr. President, at the stage  
11 where we are there are many questions  
12 which arise at least as far as I am  
13 concerned on the haphazard manner in  
14 which the Prosecution is behaving and  
15 this is a Prosecutor of an International  
16 Tribunal. Firstly the cavalier manner  
17 which is being practised by the  
18 Prosecutor consisting in the first and  
19 then subsequent drawing up of documents  
20 including an indictment should not be  
21 something which comes out of this  
22 institution which is defending human  
23 rights. Secondly the Prosecutor is  
24 saying that they have evidence and this  
25 is serious indication and that he is not

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ICTR - CHAMBER II

Nziororera

1 now able to formulate an indictment.  
2 This requires that I make the following  
3 comments. First of all even the serious  
4 indications and the evidence mentioned in  
5 the letter of the Prosecutor do not exist  
6 at all and the prosecution should now try  
7 and find out what he can do by asking for  
8 an extension of the detention. And may  
9 be if necessary they did not have the  
10 evidence. May be they did not have the  
11 services necessary. There were probably  
12 persons in Kigali who are inventing  
13 crimes and wanting to place them upon  
14 persons who are under detention.  
15 Mr. President I wish therefore, that the  
16 Prosecutor properly executes its' work  
17 and that is my observing. Secondly  
18 alternatively the Prosecutor is probably  
19 looking at the documents which were  
20 ceased from my residence so that they can  
21 draw matters of substance which will  
22 enable him or her to file an indictment.  
23 Here I have received a document saying  
24 that they are studying these documents  
25 and the representative of the Prosecutor

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ICTR - CHAMBER II

Nzirorera

1 has just said and confirmed this. But do  
2 they require 30 days? Is that  
3 sufficient? In my particular case we are  
4 already 60 days. In other words the 35  
5 days I spent in Cotonou prison and the 30  
6 days which I have spent at the UNDF.  
7 Given what I have said Mr. President, I  
8 believe that this manner of doing things  
9 on the part of the Prosecution is  
10 prejudicial to the rights of the suspect  
11 or detainee that I am but I also believe  
12 that in the final analysis they could be  
13 detrimental to the operations themselves  
14 of the Tribunal. I am therefore, calling  
15 upon your vigilance so that this  
16 artificial material be placed aside so  
17 that there should be a stop put to  
18 criticism which is often levelled at the  
19 International Criminal Tribunal for  
20 Rwanda. Given the above, Mr. President,  
21 I can request the Tribunal to release  
22 me. Even provisionally while waiting for  
23 the prosecution to bring about crimes  
24 alleged against me because right now we  
25 see that the prosecution has nothing and

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Nzirorera

1 this is a very serious situation indeed.  
2 Nonetheless, Mr. President, if for one  
3 reason or another you were to grant the  
4 request made by the prosecution and grant  
5 an extension of my provisional detention  
6 I would remind the Tribunal that this  
7 time period would only further penalised  
8 myself and would complicate the matter of  
9 communication and disclosure because up  
10 until now I am not communicating with  
11 anyone including the members of my own  
12 family. Further more once again if such  
13 a decision for the extension of my  
14 detention were to be taken despite the  
15 arguments against as have been raised I  
16 would renew my request to have counsel,  
17 qualified counsel as soon as possible so  
18 that my defence be better prepared. It  
19 is in the light of these ideas that  
20 concerning the documents which were  
21 ceased from my residence in Cotonou, I am  
22 requesting you Mr. President, to  
23 intervene with the Prosecution so that  
24 without delay the documents be restored  
25 to me. I am also reminding the

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Nzirorera

1 Prosecution that with regards to those  
2 documents no listing or report was made  
3 of these documents at the time of the  
4 search and the report mentions only a set  
5 of documents without any listing. So I  
6 would like to come back to this  
7 reservation at the opportune moment  
8 because the methodology used by the  
9 Prosecution to carry out its'  
10 investigations on the basis essentially  
11 of having a particular clientele would  
12 ensure that history will one day have  
13 something to say about this.

14 MR. PRESIDENT:

15 Thank you, Mr. Nzirorera. I think the  
16 hearing has to be an inter-party hearing  
17 and this is why we gave you the floor.  
18 And although you are not a legal person,  
19 a lawyer as you said you have indeed  
20 carried on with a legal interpretation  
21 and we have spoken with regard to other  
22 persons who came before you. I have said  
23 that we are not at the moment interested  
24 in your interpretation and I would like  
25 to clarify two things for you. The first

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ICTR - CHAMBER II

Nzirorera

1 of which is this, as is stipulated in  
2 Rule 66 the Prosecutor should immediately  
3 disclose to you any document which he  
4 intends to use against you and which are  
5 necessary for your defence and which he  
6 obtained from you. That is what the text  
7 says. So the Prosecutor should of  
8 necessity give you these documents which  
9 you are asking for and the documents were  
10 seized in a manner which was not  
11 regular. There was no report and so on  
12 and so forth. Now after that  
13 clarification now I would like to say  
14 that you were arrested by virtue of the  
15 provisions of Rule 40. I was telling  
16 Mr. Ngirumpatse that Article 17 and 18  
17 deal with the establishment of an  
18 indictment and its' confirmation and  
19 review by a Judge but with regard to the  
20 review the Prosecutor can take certain  
21 measures and these measures could also be  
22 applied to member States in order to  
23 facilitate the task of the Prosecution  
24 and it was with this in view that we  
25 established Rule 40 Bis concerning a

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ICTR - CHAMBER II

Nzirodera

1 provisional detention because this would  
2 imply the establishment of an indictment  
3 as soon as possible. As I have said it  
4 is a sacred right for any person who is  
5 arrested to know what crimes are alleged  
6 against him. And once again, more than  
7 once we drawn the attention of the  
8 Prosecution on this issue, the need to  
9 produce an indictment against accused  
10 persons. Now Mr. Prosecutor was Mr.  
11 Nzirodera in the indictment of the 29  
12 that you mentioned because you said to  
13 the Benin authorities that there was an  
14 indictment in process?

15 MR. STEWART:

16 Yes, I don't have the names, the 29 names  
17 but I think if mention is made of this in  
18 the letter he must have been there.

19 MR. PRESIDENT:

20 Now if the name of Mr. Nzirodera was in  
21 the joint indictment should I understand  
22 that the charges which were against him  
23 in that indictment still exist and that  
24 you could reutilise them in order to draw  
25 up an indictment as soon as possible?

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Nzirorera

1 MR. STEWART:

2 Certainly we will use them Mr. President  
3 but there are other elements, other  
4 information and documents which were  
5 seized and the investigations are still  
6 on going and this applicable in all  
7 cases.

8 MR. PRESIDENT:

9 Yes, Mr. Prosecutor. When you already  
10 had an indictment against a suspect the  
11 charges can indeed be used when you draw  
12 up another indictment because the  
13 investigations can continue even after  
14 the indictment is drawn up.

15 MR. STEWART:

16 Yes, Mr. President. I am basing myself  
17 on the affidavit drawn up by  
18 Mr. Nkole but if Mr. Nzirorera was on the  
19 indictment which was filed there, there  
20 is information we can use.

21 MR. PRESIDENT:

22 Well, that is what I had wanted to  
23 clarify. So given the difficulties of  
24 the investigations and its' complexity  
25 and also taking into account the rights

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ICTR - CHAMBER II

Nzirorera

1 of Mr. Nzirorera and also since there are  
2 elements in the indictment you refer to  
3 which can be used against him to draw up  
4 a new indictment, I find myself that I  
5 will not have to give you the maximum  
6 period of 30 days but to reduce it to  
7 20. So in other words in 20 days time  
8 the indictment must be properly brought  
9 out and filed with regard to this suspect  
10 because otherwise we will have to  
11 provisionally release him or return him  
12 to the national authorities which were  
13 initially responsible for his arrest and  
14 it is so decided. Thank you,  
15 Mr. Nzerorera. The session stands  
16 adjourned

17 Time: 1130

18 (pages 2-19 reported by J. Kapatamoyo)

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ICTR - CHAMBER II

C E R T I F I C A T E

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We the Official Court Reporter for the International Criminal Tribunal for Rwanda, do hereby certify that Pages 1-22 in the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (Stenotype) and thereafter transcribed by computer under our supervision and control; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in no wise interested in the result of said cause.

Judith Kapatamoyo. . . . . Page. 4. To. 22.  
Haruna Farage. . . . . Page. 1. To. 3. . .