



ICTR-98-44-AR73.3  
 27 August 2004  
 C851/H-841/H  
 Tribunal Pénal International pour le Rwanda  
 International Criminal Tribunal for Rwanda

851/H  
 RMM

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding Judge  
 Judge Mohamed Shahabuddeen  
 Judge Florence Ndepele Mwachande Mumba  
 Judge Mehmet Güney  
 Judge Inés Mónica Weinberg de Roca

**Registrar:** Mr. Adama Dieng

**Decision of:** 27 August 2004

**Mathieu NGIRUMPATSE**

v.

**THE PROSECUTOR**

Case No. ICTR-98-44-AR73.3

ICTR Appeals Chamber  
 Date: 27 August 2004  
 Action: PG  
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**DECISION ON INTERLOCUTORY APPEAL AGAINST DECISION OF 13  
 FEBRUARY 2004 PARTIALLY GRANTING THE PROSECUTOR'S  
 MOTION FOR LEAVE TO AMEND THE INDICTMENT**

**Counsel for the Prosecution**

Mr. Don Webster  
 Mr. Gregory Lombardi

**Counsel for the Defence**

Mr. Charles Roach  
 Mr. Frédéric Weyl

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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States Between 1 January and 31 December 1994 ("Appeals Chamber" and "International Tribunal," respectively) is seised of the "Appeal by the Defence of Mathieu Ngirumpatse Against the Decision of Trial Chamber III of 13 February 2004 on the 'Prosecutor's Motion for Leave to Amend the Indictment,'" filed by counsel for the Accused Mathieu Ngirumpatse ("Appellant") on 26 March 2004 ("Appeal"). The Appeals Chamber hereby decides the Appeal on the basis of the written submissions of the parties.

I. Procedural History

2. On 29 August 2003, the Prosecution filed a motion requesting leave to file a proposed amended indictment pursuant to Rule 50 of the Rules of Procedure and Evidence ("Rules"). Trial Chamber III granted the motion in part and dismissed it in part in a decision dated 8 October 2003.<sup>1</sup> The Trial Chamber certified the decision for interlocutory appeal.<sup>2</sup> On 19 December 2003, the Appeals Chamber, by majority, found that the Trial Chamber erred in concluding that the indictment could not be amended, vacated the Trial Chamber's decision, and remitted the matter to the Trial Chamber.<sup>3</sup>

3. On 23 January 2004, the Prosecution filed a motion for leave to amend the indictment ("23 January Motion").<sup>4</sup> In addition to resubmitting the proposed indictment, which bore a signature date of 28 July 2003 (the "July 2003 Proposed Indictment"), the Prosecution also submitted a "revised proposed Amended Indictment" dated 23 January 2004 (the "January 2004 Proposed Indictment").<sup>5</sup> The Appellant filed a response to the 23 January Motion on 4 February 2004, arguing *inter alia* that the Trial Chamber should consider only the January 2004 Proposed

<sup>1</sup> *Prosecutor v. Bizimana et al.*, No. ICTR-98-44-I, Décision relative à la requête du Procureur en disjonction d'instance et en autorisation de modification de l'acte d'accusation, 8 October 2003.

<sup>2</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Certification to Appeal the Decision of 8 October 2003 Dismissing the Prosecutor's Motion to Amend the Accused's Indictment, 21 October 2003.

<sup>3</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-AR73, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003, para. 32.

<sup>4</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Prosecutor's *Observations Supplémentaires* Concerning the Motion to File an Amended Indictment of 29 August 2003, the Appeals Chamber Decision of 19 December 2003 and Prosecutor's Request for Leave to Include Additional Factual Allegations in the Amended Indictment Filed Pursuant to Trial Chamber III Order of 19 January 2004, dated 23 January 2004.

<sup>5</sup> *Ibid.*, para. 3.

Indictment and treat the July 2003 Proposed Indictment as having been withdrawn.<sup>6</sup> The Prosecution filed a reply on 9 February 2004.<sup>7</sup>

4. On 13 February 2004, the Trial Chamber rendered a decision granting in part and disallowing in part the Prosecution's motion to amend the indictment ("Impugned Decision").<sup>8</sup> The Trial Chamber ordered the Prosecution to alter the January 2004 Proposed Indictment to conform to the Impugned Decision and to file the resulting amended indictment on or before 18 February 2004. In conformity with the Impugned Decision, the Prosecution filed an amended indictment on that date (the "18 February Indictment").<sup>9</sup>

5. The Appellant sought certification to appeal the Impugned Decision, which the Trial Chamber granted on 19 March 2004.<sup>10</sup> The Appellant filed the Appeal on 26 March 2004.

6. The Prosecution did not file a timely response to the Appeal. On 4 May 2004, the Appellant filed a supplementary brief pointing out the Prosecution's failure to file a response and inviting the Appeals Chamber to construe this failure as the Prosecution's acquiescence in the Appeal ("Supplementary Brief").<sup>11</sup> On 6 May 2004, the Prosecution filed a short response to the Supplementary Brief, which explained that the Prosecution did not file a timely response to the Appeal because the trial attorneys in charge of the case had no knowledge that the Appeal had been filed until they received the Supplementary Brief.<sup>12</sup> On 7 May 2004, the Prosecution filed an urgent motion for an extension of time for the filing of a response to the Appeal.<sup>13</sup> The Appellant

<sup>6</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Submissions on Behalf of Mathieu Ndirumpatse on Prosecutor's Motion to File an Amended Indictment, 4 February 2004, paras. 1, 3, 7.

<sup>7</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Prosecutor's Reply to Defense *Observations Supplémentaires* concerning the Motion to File an Amended Indictment of 29 August 2003, the Appeals Chamber Decision of 19 December 2003, and Prosecutor's Request for Leave to Include Additional Factual Allegations in the Amended Indictment Filed Pursuant to Trial Chamber III Order of 19 January 2004, dated 9 February 2004.

<sup>8</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Decision on the Prosecutor's Motion for Leave to Amend the Indictment, 13 February 2004.

<sup>9</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-I, Prosecutor's Filing in Compliance with the Trial Chamber III *Décision relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation du 13 février 2004*, dated 18 February 2004.

<sup>10</sup> *Décision accordant à la défense la certification d'appel contre la décision du 13 février 2004 modifiant l'acte d'accusation et la décision orale du 23 février 2004 déclarant l'acte modifié conforme à la décision du 13 février 2004*, dated 19 March 2004.

<sup>11</sup> Supplementary Brief in Support of the Appeal Lodged by the Defence for Mathieu Ndirumpatse Against the Decision Rendered by Trial Chamber III on 13 February 2004 Relating to the Prosecutor's Motion for Leave to Amend the Indictment, 4 May 2004.

<sup>12</sup> Prosecutor's Response to Mémoire complémentaire au soutien de l'appel de la défense de M. Ndirumpatse contre la décision de la Chambre no. III en date du 13 février 2004 "relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation", 6 May 2004.

<sup>13</sup> Prosecutor's Urgent Motion to Extend the Time Limit to Respond to l'Appel de la défense de M. Ndirumpatse contre la décision de la Chambre no. III en date du 13 février 2004 "relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation," and Solemn Declaration of Gregory Lombardi in Support, 7 May 2004.

submitted a response opposing that motion on 14 May 2004.<sup>14</sup> On 28 May 2004, the Registrar made a submission under Rule 33(B) of the Rules with regard to the Prosecution's motion.<sup>15</sup> The Prosecution did not file a reply. On 10 June 2004, the Appellant filed a reply to the Prosecution's response to his Supplementary Brief.<sup>16</sup>

7. On 10 June 2004, the Appeals Chamber rendered a decision by majority that held that, although the Prosecution had failed to show good cause for its failure to file a response on time, the Prosecution's submissions would be beneficial in deciding the Appeal.<sup>17</sup> The Appeals Chamber ordered the Prosecution to file its response on or before 14 June 2004.<sup>18</sup>

8. The Prosecution filed its response to the Appeal on 14 June 2004 ("Response").<sup>19</sup> The Appellant filed a reply in support of the Appeal on 17 June 2004 ("Reply").<sup>20</sup>

9. On 17 June 2004, the Appellant filed a motion to withdraw the Appeals Chamber's decision of 10 June 2004 granting the Prosecution an extension of time to file the Response ("Motion to Withdraw").<sup>21</sup> The Prosecution filed a response to the Motion to Withdraw on 28 June 2004.<sup>22</sup>

## II. Discussion

### A. Motion to Withdraw

10. In both his Reply and his Motion to Withdraw, the Appellant asserts that the Appeals Chamber erred in permitting the Prosecution to file the Response because, in his submission, such permission violated the principles of equality of arms and "sécurité juridique" as well as the Appellant's right to a fair trial.

<sup>14</sup> Mémoire en réplique sur la "Prosecutor's Urgent Motion to Extend the Time Limit to Respond to l'Appel de la défense de M. Mathieu Ngirumpatse contre la décision de la Chambre no. III en date du 13 février 2004 'relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation' ", 14 May 2004.

<sup>15</sup> Submission of the Registrar Under Rule 33(B) of the Rules of Procedure and Evidence, 28 May 2004.

<sup>16</sup> Mémoire en duplique sur la "Réponse du Procureur au mémoire complémentaire au soutien de l'appel de la défense de M. Mathieu Ngirumpatse contre la décision de la Chambre no. III en date du 13 février 2004 'relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation,' " 10 June 2004.

<sup>17</sup> Decision on Prosecutor's Urgent Motion for Extension of Time Limit, 10 June 2004, paras. 18-21.

<sup>18</sup> *Ibid.*

<sup>19</sup> Prosecutor's Response to l'Appel de la défense de M. Ngirumpatse contre la décision de la Chambre no. III en date du 13 février 2004 "relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation," 14 June 2004.

<sup>20</sup> Mémoire complémentaire pour M. Matthieu Ngirumpatse sur l'appel de la décision de la Chambre no. III en date du 13 février 2004 "relative à la requête du Procureur aux fins d'être autorisé à modifier l'acte d'accusation," 17 June 2004.

<sup>21</sup> Requête en extrême urgence aux fins de rétractation de la décision de la chambre d'appel en date du 10 juin 2004, filed 17 June 2004.

<sup>22</sup> Prosecutor's Response to Ngirumpatse's Requête en extrême urgence aux fins de rétractation de la décision de la chambre d'appel en date du 10 juin 2004, filed 28 June 2004.

11. Rule 116(A) of the Rules of Procedure and Evidence (“Rules”) empowers the Appeals Chamber to grant extensions of time when requested by either party in appropriate circumstances. Since such relief is equally available to both Defence and Prosecution and has been a feature of the Rules for several years, there is no question of an inequality of arms or of an infringement of principles of “sécurité juridique.” Nor has the Appellant established that any principle of fairness operates to prohibit the Appeals Chamber from considering arguments submitted in an untimely manner if it concludes that the interests of justice so require, a practice that has operated to the benefit of accused as well as the Prosecution.<sup>23</sup>

12. The Appellant has shown no reason for reconsideration of the Appeals Chamber’s discretionary decision to consider the Prosecution’s untimely filing in this particular situation. The Motion to Withdraw is accordingly dismissed.

#### B. Merits of the Appeal

13. The Appellant raises three grounds of appeal. First, the Appellant cites certain procedural matters leading up to the Impugned Decision that he contends are inconsistent with his right to a fair trial within a reasonable time. Second, the Appellant contends that the Trial Chamber should not have authorized the amendments to the indictment because the resulting amended indictment does not meet the requirements of Rule 47(C) of the Rules, specifically the requirement that the indictment set forth a concise statement of the facts of the case and of the crime with which the Appellant is charged. Third, the Appellant argues that the Trial Chamber committed an error of law in granting leave to amend the indictment under Rule 50 of the Rules.

##### 1. Procedural Objections

14. The Appellant claims that the Prosecution’s 23 January Motion was transmitted to him at 10 p.m. in English. The Appellant contends that the time for filing a response should have been extended, particularly given the complexity of the matters at issue and the time required to prepare and serve the French translation of the 23 January Motion on counsel for the accused.<sup>24</sup> The Appellant also objects to the Trial Chamber’s statement that “the Defence failed to file a rejoinder”

<sup>23</sup> See, e.g., *Prosecutor v. Bizimungu et al.*, No. ICTR-99-50-AR50, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 12 February 2004, para. 9 (accepting a response filed belatedly by an accused).

<sup>24</sup> Appeal, paras. 10, 12.

to the reply filed by the Prosecution on 9 February 2004;<sup>25</sup> the Appellant suggests that his counsel did not receive a copy of the Prosecution reply at a time that would have permitted consultation with the Appellant and with other Defence counsel to enable preparation of a rejoinder before the Impugned Decision was issued on 13 February 2004.<sup>26</sup>

15. The Appellant made an oral request during a status conference on 27 January 2004 for an extension of time in which to file his response to the 23 January Motion pending receipt of French translations. The Trial Chamber appears to have acted on that request during the same status conference.<sup>27</sup> The exact nature of the arrangement is not clear from the record, but the Appellant has not indicated whether he made an additional request for further time in which to prepare a response or that such a request was unfairly denied. Indeed, the Appellant filed a response on 4 February 2004 and it was duly taken into account in the Impugned Decision. The Appellant therefore has not shown how the Trial Chamber could have committed an error with regard to the Appellant's opportunity to file his response.

16. Moreover, neither the matter of a response nor that of a rejoinder was addressed in the Impugned Decision or in the Trial Chamber's grant of certification for interlocutory appeal under Rule 73(B) of the Rules. These objections are therefore not properly before the Appeals Chamber on this interlocutory appeal.

17. The Appellant also contends that the Trial Chamber erroneously held that it was seised of a motion for leave to amend "the Indictment of 28 July 2003," whereas the only operative indictment in the case was the indictment dated 21 November 2001.<sup>28</sup> The Appellant does not refer to any part of the Impugned Decision suggesting that the Trial Chamber viewed the Prosecution's 23 January Motion as seeking to amend the July 2003 Proposed Indictment. On the contrary, the Trial Chamber took as its point of reference the 21 November 2001 indictment, which it referred to both as the "November 2001 Indictment" and as the "current Indictment."<sup>29</sup> The Trial Chamber mentions the July 2003 Proposed Indictment only in summarizing the Prosecution's arguments and in reference to the procedural history of the case.<sup>30</sup> Nowhere did the Chamber suggest that it was treating the July 2003 Proposed Indictment as an operative indictment that was subject to amendment. The Appellant has not shown that the Trial Chamber committed any error in this regard.

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<sup>25</sup> Impugned Decision, p. 2.

<sup>26</sup> Appeal, para. 13.

<sup>27</sup> Transcript of Status Conference, 27 January 2004, p. 33 (closed session).

<sup>28</sup> Appeal, para. 11.

<sup>29</sup> See Impugned Decision, paras. 30, 32-33, 35, 42 & notes 5-9.

<sup>30</sup> Impugned Decision, paras. 21, 28-29.

2. Compliance with Rule 47(C) of the Rules

18. The Appellant next contends that the Trial Chamber should not have granted leave to amend the indictment because the resulting 18 February Indictment does not satisfy the requirements of Rule 47(C) of the Rules that an indictment set forth “a concise statement of the facts of the case and of the crime with which the suspect is charged.” The Appellant raises this argument with respect to two proposed amendments: the pleadings of paragraph 66 of the 18 February Indictment and the pleading of a joint criminal enterprise as a mode of liability.

19. Paragraph 66 of the 18 February Indictment, which appears in the count charging serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto, states as follows:

66. *All named accused* are held responsible for the killings of protected persons committed by their named and un-named co-perpetrators, including, individually and severally, each co-accused charged by the present indictment, in so far as such killings were committed pursuant to a common plan, strategy or design, or were the natural and foreseeable consequence of such joint criminal enterprise to destroy the Tutsi as a group.<sup>31</sup>

20. The Appeals Chamber has already confronted one dispute with regard to the meaning of this paragraph, in which a co-accused of this Appellant contended that the paragraph stated a charge of a “third category” of joint criminal enterprise.<sup>32</sup> The Appeals Chamber accepted the Prosecution’s representation that it was not pursuing such a mode of liability but recommended that the Prosecution make a further amendment removing the words “or were the natural and foreseeable consequence of such joint criminal enterprise to destroy the Tutsi as a group” from paragraph 66.<sup>33</sup>

21. In this case, the Appellant makes a different argument, namely that paragraph 66 extends the charges against him to include criminal liability for acts that are insufficiently pleaded in the indictment. The Trial Chamber rejected this contention, concluding that paragraph 66 “constitutes a general conclusion to the allegations referred to in the preceding paragraphs, and does not add any new charges against the Accused.”<sup>34</sup>

22. The Prosecution did not contest the Trial Chamber’s interpretation of paragraph 66 and has not taken issue with it before the Appeals Chamber. The Appeals Chamber therefore has no reason to disagree with the Trial Chamber’s interpretation of that paragraph. In light of the Trial

<sup>31</sup> 18 February Indictment, para. 66.

<sup>32</sup> *Nzitorera v. Prosecutor*, No. ICTR-98-44-AR72.3, Decision on Validity of Appeal of Joseph Nzitorera Regarding Joint Criminal Enterprise Pursuant to Rule 72(E) of the Rules of Procedure and Evidence, 11 June 2004, para. 10.

<sup>33</sup> *Ibid.*, paras. 11-12.

Chamber's conclusion that paragraph 66 does not support any allegations against the Appellant beyond those contained in other paragraphs of the 18 February Indictment, its alleged failure to contain a statement of the "facts of the case" or the "crime with which the suspect is charged" does not render the indictment defective.

23. As for the pleading of joint criminal enterprise as a mode of liability, the Appellant contends that the concept of joint criminal enterprise is "extraneous to the Statute" of the International Tribunal and does not satisfy the requirement of Rule 47(C) of the Rules that the indictment "set forth ... a concise statement of the facts of the case and of the crime with which the suspect is charged."<sup>35</sup> The Appellant has not developed any argument in support of this general attack other than to assert that the pleading of a joint criminal enterprise rendered the January 2004 Proposed Indictment inadmissible *per se*. Without further development, this assertion fails to establish any error in the Trial Chamber's decision.

24. The Appellant finally asserts that the January 2004 Proposed Indictment failed to allege any facts that could establish the Appellant's complicity in, instigation of, or criminal liability for the acts of others.<sup>36</sup> The Appellant does not indicate what portion of the January 2004 Proposed Indictment suffers from this flaw, other than paragraph 66, which is discussed above. A cursory review of the 18 February Indictment submitted by the Prosecution reveals several particulars regarding acts for which, the Prosecution contends, the Appellant is criminally liable due to his participation in an alleged joint criminal enterprise. The Appeals Chamber will not scrutinize the entire 18 February Indictment for potential vagueness given that the Appellant himself has not provided specific arguments regarding which allegations the Appellant believes to be problematic.

### 3. Exercise of Discretion Under Rule 50 of the Rules

25. The Appellant's final contention is that the Trial Chamber erred in concluding that the indictment should be amended under Rule 50 of the Rules.

26. Rule 50 of the Rules confers discretion upon the Trial Chamber to determine whether an amendment to an indictment should be allowed.<sup>37</sup> An appellant who challenges a Trial Chamber's exercise of a discretionary power "must show 'that the Trial Chamber misdirected itself either as to

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<sup>34</sup> Impugned Decision, para. 49.

<sup>35</sup> Appeal, para. 15 ("...granted that the characterisation of 'joint criminal enterprise' is extraneous to the Statute, and that the Motion for amendment was thus inadmissible as it did not contain a legal characterisation of the crimes ...") (emphasis omitted).

<sup>36</sup> Appeal, para. 17 ("... the Motion sought leave to amend the Indictment which neither contains a concise statement of facts relating to the possible charges of complicity, incitement or command responsibility ...").



the principle to be applied, or as to the law which is relevant to the exercise of the discretion, or that it has given weight to extraneous or irrelevant considerations, or that it has failed to give weight or sufficient weight to relevant considerations, or that it has made an error as to the facts upon which it has exercised its discretion.”<sup>38</sup> If the Trial Chamber has considered the proper factors, the Appeals Chamber will not intervene solely because it might have reached a different outcome; “[d]isagreement with the result of an exercise of discretion, without more, is not a basis for appellate interference.”<sup>39</sup>

27. The Appellant contends that the Trial Chamber should have found that the Prosecution failed to establish that it acted with diligence in bringing the motion to amend the indictment. In this regard, the Appellant does not argue – and cannot argue – that the Trial Chamber failed to consider the factor of diligence. On the contrary, the Trial Chamber expressly concluded that the Prosecution had failed to show diligence in some respects and rejected certain proposed amendments on that basis.<sup>40</sup> Rather, the Appellant contends that the Trial Chamber accepted the Prosecution’s explanations with insufficient proof.

28. The Appellant does not show that the Trial Chamber failed to give weight or sufficient weight to relevant considerations or that it made an error as to the facts upon which it has exercised its discretion. Rather, the Appellant contends that, given the record before it, the Trial Chamber should have reached the opposite conclusion with regard to the Prosecution’s showing of diligence. The Appellant’s disagreement with the outcome of the Trial Chamber’s exercise of discretion, without more, is not a sufficient basis for the intervention of the Appeals Chamber.

29. The Appellant next contends that the Trial Chamber should have rejected the Prosecution’s motion as having been brought in bad faith.<sup>41</sup> The Appellant’s principal arguments in support of this contention duplicate arguments already discussed: lack of prosecutorial diligence, the pleading of a joint criminal enterprise, and the vagueness of paragraph 66 of the 18 February Indictment.<sup>42</sup> The Appellant’s mere assertion that these arguments constitute proof of “bad faith” does not constitute grounds for reversing the Trial Chamber’s contrary conclusion that “a factual

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<sup>37</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-AR73, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003, para. 9.

<sup>38</sup> *Ibid.* (quoting *Prosecutor v. Milošević*, Nos. IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 5 (footnotes omitted)).

<sup>39</sup> *Prosecutor v. Bizimungu et al.*, No. ICTR-99-50-AR50, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 12 February 2004, para. 14.

<sup>40</sup> Impugned Decision, paras. 27, 34, 35.

<sup>41</sup> See Appeal, paras. 29, 32.

<sup>42</sup> Appeal, paras. 26-29.

examination does not show a deliberate pattern of behaviour with the aim of obtaining an advantage over the Defence.”<sup>43</sup>

30. The Appellant also argues that the Impugned Decision failed to take adequate account of the orderly administration of justice and the Appellant’s right to a fair trial.<sup>44</sup> The Appellant’s argument is contradicted by the Impugned Decision, which expressly considered and concluded that the amended indictment “is aimed at restricting, in some respects, the scope of the allegations against the Accused” and that the amendments “should simplify and streamline the procedure” and lead to “a more expeditious trial.”<sup>45</sup> The Trial Chamber also considered the rights of the accused, concluding that “greater precision and streamlining of the Indictment, resulting from the amendments authorized, would facilitate the Defence’s preparation.”<sup>46</sup> The Trial Chamber also acknowledged the need to permit the Defence to conduct investigations in relation to the new allegations contained in the proposed amendments and “reserve[d] the right to recall some witnesses, if necessary.”<sup>47</sup>

31. The Appellant contends that the nature of the amendments, particularly the addition of joint criminal enterprise as a mode of liability, requires that the trial begin *de novo* to permit the Defence to re-examine Prosecution witnesses with the 18 February Indictment in mind.<sup>48</sup> As with the decision to grant a motion under Rule 50 of the Rules, this issue of trial administration is within the Trial Chamber’s discretion. Given the Trial Chamber’s readiness to recall Prosecution witnesses if necessary, it cannot be said that the Trial Chamber has erred in the exercise of its discretion in this respect.

32. The Appellant also intimates that the Defence has been handicapped in its investigation of new allegations by budgetary constraints restricting access to investigators and reducing the ability of Defence teams to collaborate in preparing a Defence.<sup>49</sup> These allegations need not be addressed at present, as they are not developed in detail and are beyond the scope of the Impugned Decision that the Trial Chamber certified for interlocutory appeal.

33. In sum, the Trial Chamber considered the Appellant’s arguments regarding diligence, bad faith, the right to a fair trial and the orderly administration of justice in reaching its decision. The Impugned Decision carefully analyzed the factors relevant to its exercise of discretion. The

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<sup>43</sup> Impugned Decision, para. 50.

<sup>44</sup> Appeal, paras. 33, 40.

<sup>45</sup> Impugned Decision, para. 42.

<sup>46</sup> Impugned Decision, para. 46.

<sup>47</sup> Impugned Decision, para. 51.

<sup>48</sup> Appeal, para. 39.

<sup>49</sup> Appeal, paras. 41-42.

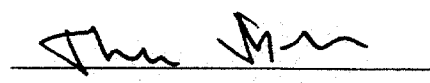
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Appellant has shown no basis for concluding that the Trial Chamber “misdirected itself either as to the principle to be applied, or as to the law which is relevant to the exercise of the discretion, or that it [gave] weight to extraneous or irrelevant considerations, or that it ... failed to give weight or sufficient weight to relevant considerations, or that it ... made an error as to the facts upon which it ... exercised its discretion.”<sup>50</sup>

III. Disposition

34. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal.

Done in French and English, the English text being authoritative.



Theodor Meron  
Presiding Judge

Done this 27<sup>th</sup> day of August 2004,  
At The Hague,  
The Netherlands.

[Seal of the International Tribunal]



<sup>50</sup> *Prosecutor v. Karemera et al.*, No. ICTR-98-44-AR73, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, 19 December 2003, para. 9 (quoting *Prosecutor v. Milošević*, Nos. IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 5 (footnotes omitted)).