

ICTR-98-44-T
2-11-2004
(15410 - 15408)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judge: Dennis C. M. Byron, Presiding
Registrar: Adama Dieng
Date : 2 November 2004

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
André RWAMAKUBA

Case N° ICTR-98-44-T

JUDICIAL RECORDS/ARCHIVES
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**ORDER GRANTING EXTENSION OF TIME TO REPLY TO
PROSECUTOR'S MOTION FOR LEAVE TO AMEND THE INDICTMENT OF
18 FEBRUARY 2004 AND SUPPLEMENT TO PROSECUTOR'S REQUEST TO
VARY FINAL WITNESS LIST**

Rule 54 of the Rules

Defence Counsel

Charles Roach and Frédéric Weyl, for
Mathieu Ngirumpatse
Peter Robinson, for Joseph Nzirorera
Dior Diagne and Félix Sow, for Edouard
Kareméra
David Hooper and Andreas O'Shea, for
André Rwamakuba

Office of the Prosecutor:

Don Webster
Dior Sow Fall
Gregory Lombardi
Sunkarie Ballah-Conteh
Tamara Cummings-John
Ayo Fadugba

[Signature]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

SITTING as Trial Chamber III, composed of Judge Dennis C. M. Byron, presiding judge, sitting pursuant to Rule 54 of the Rules of Procedure and Evidence ("Rules");

CONSIDERING Joseph Nzirorera's "Motion for Extension of Time to Respond to Prosecutor's Motion for Leave to Amend the Indictment of 18 February 2004 and Supplement to Prosecutor's Request to Vary Final Witness List", filed on 13 September 2004 ("Defence");

CONSIDERING André Rwamakuba's "Application on behalf of Dr. André Rwamakuba to Extend Time Limit for Response to Prosecutor's Motion to Vary Final Witness List", filed on 15 September 2004 ("Defence");

CONSIDERING Mathieu Ngirumpatse's motions, entitled "Requête aux fins d'extension de délai de réponse de la défense de M. Ngirumpatse sur la *Prosecutor's Motion for Leave to Amend the Indictment of 18 February 2004*" and "Requête aux fins d'extension de délai de réponse de la défense de M. Ngirumpatse sur le *Supplement to Prosecutor's Request to Vary Final List in the Matter of Prosecutor v. Karemera et al.*", filed on 16 September 2004 ("Defence");

CONSIDERING the Prosecutor's responses to Joseph Nzirorera's motion, André Rwamakuba's motion and Mathieu Ngirumpatse's motions, filed on 15 September 2004 and 17 September 2004;

HEREBY DECIDES

1. The trial in the present case commenced on 27 November 2003 before a section of Trial Chamber III composed of Judge Vaz, presiding, and Judges Lattanzi and Arrey. On 14 May 2004, Judge Vaz withdrew from the case.¹ On 16 July 2004, the two remaining Judges in the case decided that it would be in the interests of justice to continue the trial with a substitute Judge, pursuant to Rule 15bis(D) of the Rules.² The accused Joseph Nzirorera, Mathieu Ngirumpatse, Edouard Karemera and André Rwamakuba appealed that decision. The trial was suspended.

2. On 10 September 2004, the Prosecution filed two motions, one seeking leave to amend the Indictment of 18 February 2004 and the other requesting to vary the final witness list. On 13 September 2004, the Defence for Joseph Nzirorera filed a motion seeking an extension of time in which to file its response to the cited Prosecutor's motions. The Defence for André Rwamakuba sought also an extension of time in which to file its response to the Prosecutor's motion to vary the final witness list.³ On 16 September 2004, the Defence for Mathieu Ngirumpatse requested an extension of time to respond to the cited Prosecution motions. The

¹ See Decision on Motions by Nzirorera and Rwamakuba for Disqualification of Judge Vaz (Bureau), 17 May 2004, para. 6.

² Decision on Continuation of Trial (TC), 16 July 2004.

³ Application on behalf of Dr. André Rwamakuba to Extend Time Limit for Response to Prosecutor's Motion to Vary Final Witness List, filed on 15 September 2004.

Prosecutor opposes Nzirorera's and Ngirumpatse's motions. He does not object to Rwamakuba's motion only as far as it seeks an extension of the time limit until 20 September 2004.

3. In its decision of 28 September 2004 and its reasons of 22 October 2004, the Appeals Chamber quashed the decision of 16 July 2004 to continue the proceedings with a substitute Judge.⁴ Following that decision, Judge Byron was designated as Presiding Judge in this case on 1 November 2004.

4. Pursuant to Rule 54 of the Rules, a judge may *proprio motu* issue orders as may be necessary for the preparation or conduct of the trial.

5. In the present situation, at the time the Prosecutor filed the motion for leave to amend the indictment and his supplemental motion to vary the final witness list, the bench was not constituted. While the Appeals Chamber's decision on the continuation of the current trial was pending, the proceedings were in fact suspended. There was no bench having jurisdiction to deliver any decisions in the current trial.

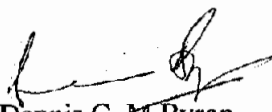
6. It is in the interests of justice and the rights of the accused that the Defence may file its replies based upon their knowledge of the Appeals Chamber's decision on the continuation of the trial. This way, the Defence responses can be more focused thereby enabling the Chamber to deliver its decision in an expeditious manner. Accordingly, it is necessary for the purpose of a proper conduct of the trial that all accused have full opportunity to reply to the Prosecutor's motions seeking leave to amend the indictment of 18 February 2004 and requesting to vary final witness list.

FOR THE ABOVE REASONS, THE CHAMBER

EXTENDS the time limits for all the accused, as far as they have not yet replied thereon and

AUTHORIZES the Defence for Joseph Nzirorera, for Mathieu Ngirumpatse, for Edouard Karemera and for André Rwamakuba respectively to file their reply to the Prosecutor's motion for leave to amend the indictment of 18 February 2004 and to the Prosecutor's supplement to his request to vary the final witness list within five days after the present decision has been served to it.

Arusha, 2 November 2004


Dennis C. M. Byron
Presiding

[Seal of the Tribunal]



⁴ Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 28 September 2004; Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004.