

ICTR-98-44-P1  
6-1-2005  
(17253-17251)

17253  
HM



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:** 5 January 2005

JUDICIAL RECORDS/ARCHIVES  
ICTR  
RECEIVED  
2/1/05  
2005 JAN -6 A 10:50

**THE PROSECUTOR**

v.

**Édouard KAREMERA  
Mathieu NGIRUMPATSE  
Joseph NZIRORERA  
André RWAMAKUBA**

Case No. ICTR-98-44-R73

**DECISION GRANTING EXTENSION OF TIME**  
*Rule 73(E) of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Don Webster  
Holo Makwaia  
Dior Fall  
Gregory Lombardi  
Bongani Dyani  
Sunkarie Ballah-Conteh  
Tamara Cummings-John  
Takch Sendze

**Defence Counsel:**

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

*Decision granting extension of time*

5 January 2005

17252

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

**SITTING** as Trial Chamber III composed of Judge Dennis C. M. Byron;

**CONSIDERING** André Rwamakuba's Motion requesting extension of time to respond to Prosecution Motion to sever Rwamakuba and for leave to file separate amended indictments against Rwamakuba and against Karemera, Ngirumpatse and Nzirorera, or alternatively for leave to amend the indictment against Karemera, Ngirumpatse, Nzirorera and Rwamakuba ("Defence"), filed on 29 December 2004;

**CONSIDERING** that the Prosecution has not filed any response within the time-limit prescribed by the Rules;

**HEREBY DECIDES** the Motions, pursuant to Rule 73 of the Rules of Procedure and Evidence ("Rules").

1. On 20 December 2004, the Prosecution filed a "Consolidated Motion to Sever Rwamakuba from the Joint Indictment and to Try Him Separately, For Leave to a Separate Amended Indictment against Rwamakuba, and For Leave to File a Separate Amended Indictment Against Karemera, Ngirumpatse and Nzirorera", or alternatively, "for Leave to Amend the Indictment against Karemera, Ngirumpatse, Nzirorera and Rwamakuba" ("Prosecution Motion").
2. The Defence requests an extension of time until 10 January 2005 to respond to the Prosecution Motion. The Defence recognizes that, on 20 December 2004, the Prosecution sent it a document, by email, described as "a preview and courtesy copy" of the "latest motion" seeking severance of Rwamakuba and amendment of the indictment. However, in the Defence's view, since that copy was not intended to constitute official service, as indicated by the Prosecution in its email, it cannot be considered as a motion "received within the meaning of the Rules". Up to and including 23 December 2004, the Defence claims that it has no knowledge of any official filing of this intended Prosecution motion. The Defence contends that a responding party cannot be expected to file a reply until it has received a signed and stamped or "otherwise unambiguously filed" motion. The Defence indicates further that, as from 24 December 2004 and up until 5 January 2005, due to the Christmas holiday period, neither Lead nor Co-Counsel are present in the locations where they would normally receive notice of official filing by fax. The Defence emphasizes the significant matter raised by the Prosecution Motion and concludes that time is principally required to review the position among counsel and with the client.
3. The Chamber recalls that, pursuant to Rule 73(E) of the Rules and in principle, a responding party has to file any reply within five days "from the date on which Counsel received the motion" (emphasis added).
4. The Chamber observes that although the Defence was informed, by email sent on 20 December 2004 by the Registrar, of the filing of the Prosecution Motion, the hard copies of the Annexes thereto (mainly the supporting material) were only recently delivered to the Defence. It is therefore only a few days ago that the Defence was able to compare those documents with the allegations in the proposed amended indictments. The Chamber notes further that the Decision of 7 December 2004 authorizes the Defence teams, if they need the French translation of the Prosecution Motion and Annexes thereto, to file their responses five

*Decision granting extension of time*

5 January 2005

17251

days from the date of the service of the translation. Until now, it appears that the translation of those documents is not yet available to the francophone Defence. The denial of the Defence Motion is therefore not likely to save any time.

5. Considering those factual particular circumstances of the case, the Chamber considers that the extension requested shall not seriously affect the schedule of the Trial's beginning. The Chamber is of the view that in the interest of justice and fair trial, the motion should be granted.

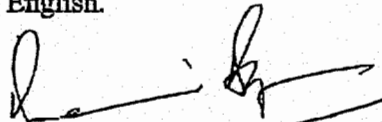
**FOR THE ABOVE REASONS,**

**THE CHAMBER**

**GRANTS** the motion

**AND AUTHORIZES** Defence Counsel for Rwamakuba to file its Response no later than 10 January 2005.

Arusha, 5 January 2005, done in English.

  
Dennis C. M. Byron  
Presiding Judge

[Seal of the Tribunal]

