

ICTR-98-44-1
12-12-2005
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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 Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 12 December 2005

THE PROSECUTOR

v.

**Edouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

2005 DEC 12 P 5:10
[Signature]
12-12-2005

**DECISION ON PROSECUTION REQUEST FOR ADDITIONAL TIME TO FILE
EXPERT REPORT AND JOSEPH NZIRORERA'S MOTION TO EXCLUDE
TESTIMONY OF CHARLES NTAMPAKA**

Article 20 of the Statute and Rule 94bis of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
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Gilles Lahaie
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Takeh Sendze

Defence Counsel for Édouard Karemera

Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse

Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera

Peter Robinson and Patrick Nimy Mayidika Ngimbi

[Signature]

*Decision on Prosecution Request for Additional Time To File Expert Report and 12 December 2005
Defence Motion for Exclusion of Expert Ntampaka Testimony*

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),
SITTING as Trial Chamber III, composed of Judge Dennis C. M. Byron, Presiding Judge,
Judge Emile Francis Short and Judge Gberdao Gustave Kam (“Chamber”);
BEING SEIZED of the “Prosecutor’s Request for Additional Time Filing Expert Report of
Charles Ntampaka”, filed on 24 November 2005 (“Prosecution Motion”) and of “Joseph
Nzirorera’s Motion to Exclude Testimony of Charles Ntampaka”, filed on 28 November 2005
 (“Defence Motion”);
CONSIDERING the Prosecution’s Response to the Defence Motion, filed on 30 November
2005;
HEREBY DECIDES the Motion pursuant to Rule 73 of the Rules of Procedure and
Evidence (“Rules”).

INTRODUCTION

1. On 16 May 2005, the Chamber ordered the Prosecution to disclose the statements of all the expert witnesses the Prosecution intends to call to testify to the Chamber and the Defence of all of the Accused by 15 August 2005.¹ In case of default of disclosure, the Prosecutor was requested to provide the Chamber and the Defence with reasons and indicate the revised date by which the disclosure would occur.
2. On 9 September 2005, being satisfied with the explanations provided by the Prosecution in its request for more time to fulfill its disclosure obligations under Rule 94*bis* (A) of the Rules, the Chamber granted the Prosecution’s application for an extension of time to disclose the Expert Report of Mr. Charles Ntampaka by 25 November 2005.² This deadline was determined on the basis of the information provided by and the date proposed by the Prosecution. The Chamber also considered that whilst this report should have been disclosed at the earliest possible time, the rights of the Accused would not be prejudiced if the Prosecution filed it within the time-limits set out in its motion of 11 August 2005.³
3. The trial in this case started on 19 September 2005, with the Prosecution calling its first witnesses. On 24 November 2005, the Prosecution filed a Motion seeking an extension of time to disclose the report of Expert Witness Charles Ntampaka to 6 January 2006. As a result of this application, the Defence for Nzirorera filed a separate Motion seeking the exclusion of Mr. Ntampaka’s testimony. The Chamber will now address these two Motions.

¹ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-PT (“*Karemera et al.* case”, Decision on Joseph Nzirorera’s Motion for Deadline for Filing of Reports of Experts (TC), 16 May 2005.

² *Karemera et al.* case, Decision on Prosecutor’s Notice of Delay in Filing Expert Reports and Request for Additional Time to Comply with the Chamber Decision of 16 May 2005 (TC), 9 September 2005.

³ *Id.*, par. 12.

DELIBERATIONS

4. In its Motion, the Prosecution contends that relevant documents for the Expert Report were only recently dispatched to Mr. Ntampaka, due to some confusion at the express mail delivery office. It also submits that this delay has been exacerbated by the expert's extremely busy schedule. The Prosecution claims that the extension sought will not prejudice the Accused as the expert is not scheduled to testify in the next trial session and his report will be disclosed to the Defence well in advance of his anticipated testimony.

5. In its separate Motion, the Defence for Nzirorera alleges that the Prosecution's chronic non-compliance with the Chamber's Order should be remedied by an order excluding Mr. Ntampaka's testimony. It relies on the standard set out by the Appeals Chamber when deciding whether to consider evidence not produced on time pursuant to Rule 115 of the Rules.⁴ It claims that the explanations provided by the Prosecution demonstrate negligence and not due diligence. The Prosecution replies that Nzirorera's Motion is premature and that the Prosecution's arguments for the delay in filing expert report are serious. The Prosecution emphasizes the importance of the Expert Witness' testimony and the fact that expert witnesses are very busy people who have to deal with complex matters.

6. The Chamber is of the view that the Prosecution's arguments can certainly not justify an extension of time until 9 January 2006. Since the deadline for disclosure was determined in accordance with the information provided by the Prosecution, the latter should be in a position to manage its case to ensure that the expert will be able to complete his report before the date suggested by the Prosecution.

7. It must be however admitted that the Prosecution cannot be held responsible for the late dispatch of documents to the Expert. While the Chamber is strongly concerned by the compliance with its prior orders, there is no doubt that, in the present case, an external factor beyond the Prosecution's control was the cause of the failure to comply with the deadline stipulated by the Chamber.

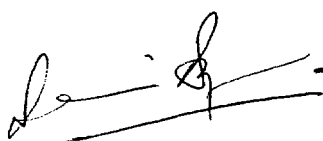
8. Further, at this stage, there is no reason to exclude the Expert Witness's testimony since the Mr. Ntampaka will be called to testify in late 2006 and therefore the Defence will have adequate time and facilities to prepare for his testimony. In the Chamber's view, the rights of the Accused will not be prejudiced by a short extension of time because of the delay due to late dispatch of documents.

⁴ Defence refers to *Prosecutor v. Natgerura et al.*, Case No. ICTR-99-46-A, Decision on Prosecution Motion for Admission of Additional Evidence (AC), 10 December 2004; *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Hassan Ngeze's Motion to Present Additional Evidence (AC), 14 February 2005.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER

- I. GRANTS** in part the Prosecution Motion, and
- II. ORDERS** the Prosecutor to disclose to the Chamber and the Defence of all of the Accused in the instant proceedings the statements of expert witness Charles Ntampaka no later than 19 December 2005;
- III. DENIES** the Defence Motion in its entirety.

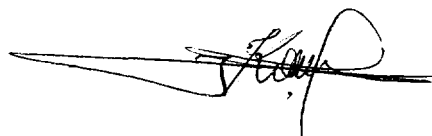
Arusha, 12 December 2005, done in English.



Dennis C. M. Byron
Presiding Judge



Emile Francis Short
Judge



Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

