



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
15-12-2005
(24775-24773)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

24775
24773
OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 15 December 2005

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T**

2005 Dec 15 14:42
ICTR
15-12-2005

**DECISION ON PROSECUTION'S MOTION TO RENEW AND EXTEND TRANSFER
ORDER OF DETAINED PROSECUTION WITNESS OMAR SERUSHAGO**

Rule 90bis of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Gregory Lombardi
Iain Morley
Gilles Lahaie
Sunkarie Ballah-Conteh
Tamara Cummings-John
Takeh Sendze

Defence Counsels 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

24774

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 "Motion to Renew and Extend Transfer Order of Detained Prosecution Witness Omar Serushago" ("Motion"), filed by *ex parte* by the Prosecutor on 8 December 2005;

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

INTRODUCTION

1. On 31 March 2005, the Chamber granted the Prosecutor's motion for renewal and extension of the transfer of the detained witness Omar Serushago until the 31 December 2005. The said Prosecutor's detained witness did not testify during the first trial session held from 19 September to 28 October 2005. The next trial session is scheduled to start on 13 February 2006.

2. In its Decision of 31 March 2005, the Chamber ruled that if Omar Serushago does not testify as expected, any request for extension of time should be filed before 15 December 2005. The Prosecutor is now seeking a new extension of time of Omar Serushago's transfer, until such a time that this witness has finished testifying in this case.

DELIBERATIONS

3. The Prosecutor submits that Omar Serushago did not testify as expected in the first trial session. It is still unclear whether Omar Serushago will testify during the next trial session due to its duration and the necessity to call first other Prosecutor witnesses.

4. As a preliminary matter, the Chamber observes that the Prosecutor's motion was entertained *ex parte*. In the present circumstances, the Chamber accepts this *ex parte* filing in the interest of justice.

5. On the merits, Rule 90*bis* of the Rules provides that a Trial Chamber shall issue a transfer order only after prior verification that the following conditions are met:

- i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.

6. In the present case, Omar Serushago was convicted and sentenced to 15 years of imprisonment by the Tribunal with credit for the time served in detention prior to the Judgment.¹ After an agreement between the Tribunal and the Government of Mali, the witness was sent to Mali to serve his term of imprisonment. The Chamber notes that Omar Serushago was transferred from Mali to Arusha on 9 November 2002, pursuant to a Trial Chamber III Order of 2 October 2002,² to testify as a Prosecutor witness. On 11 February 2003, the Trial Chamber III extended the transfer for a period not exceeding 12 months.³

¹ *Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-S, Sentence (TC), 5 February 1999.

² *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T (*Bagosora et al.* Case), Order for the Transfer of Detained Prosecution Witness Omar Serushago (TC), 2 October 2002. Order for the Transfer of Detained Prosecution Witness Omar Serushago (TC), 2 October 2002.

³ *Bagosora et al.* Case, Order (TC), 11 February 2003.

Further, on 31 March 2005, a renewal and extension of his transfer was granted by this Chamber until 31 December 2005.⁴

7. As a witness who has been convicted and sentenced by the Tribunal, the Chamber finds that the witness will not be required for any criminal proceedings in progress in the territory of Mali during the period he is required by the Tribunal; or that the extension of his transfer to the Tribunal for the need of his testimony could extend the period of his detention in Mali.⁵

8. The Chamber recalls that, pursuant to Rule 90*bis* of the Rules, the Registry has to inform the Chamber of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the detention of the witness in the UNDPF. No information of such a kind has been transmitted to the Chamber. While the presence of the witness is still requested for the present case, his temporary detention at UNDPF for the purposes of the next trial session will not cause him any prejudice.

9. The Chamber is therefore satisfied that the requirements set out by Rule 90*bis* of the Rules are met.


FOR THE ABOVE REASONS, THE CHAMBER

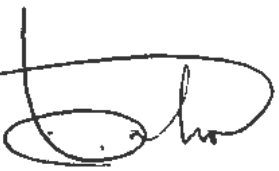
I. **GRANTS** the renewal and extension of the transfer of the detained witness Omar Serushago temporarily to the UNDPF in Arusha until the completion of his testimony in the current trial.


II. **INSTRUCTS** the Registrar to:

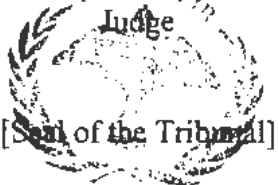
- A) Transmit this Order to the Governments of Mali;
- B) Remain abreast of any changes which might occur regarding the conditions of detention provided for by the requested State and which may possibly affect the length of the temporary detention and, within the shortest possible time, inform the Trial Chamber of any such change.

Arusha, 15 December 2005, done in English.


Dennis C. M. Byron
Presiding


Emile Francis Short
Judge


Gilbertao Gustave Kam
Judge


[Seal of the Tribunal]

⁴ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Prosecution's Motion to Renew and Extend the Transfer of Detained Prosecution Witness Omar Serushago (TC), 31 March 2005.

⁵ *Bagosora et al.* Case, Order for the Transfer of Detained Prosecution Witness Omar Serushago (TC), 2 October 2002, paras. 5-8.