

ICTR-98-44-T
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(25283-25280)

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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: 10 February 2006

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

2006 FEB 10 P 1:52
ICTR

DECISION ON PROSECUTION MOTION SEEKING EXTENSION OF TIME TO
FILE APPLICATIONS UNDER RULE 92BIS

Rule 92bis of the Rules of Procedure and Evidence

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INTRODUCTION

1. The trial in this case started on 19 September 2005. At an earlier stage, the Prosecution submitted a list of 216 witnesses and informed the Chamber that it will apply to have the testimonies of some of its witnesses supporting the rape charge admitted into evidence by sworn statements in lieu of oral testimony.¹ On 13 December 2005, the Chamber granted the Prosecution leave to remove 51 witnesses and to add Witness ADE to its witness list. In the same Decision, the Prosecution was ordered to file, no later than 10 January 2006, its arguments regarding the admission of the evidence of the rape witnesses in the form of a written statement in lieu of oral testimony, and to indicate which Prosecution witnesses could be removed as a result of the addition of Witness ADE's testimony,

2. The Prosecution now seeks an extension of time of the Chamber's deadline of 10 January 2006 for filing arguments concerning the admission of evidence of rape in written form, until there has been substantial evidence of rapes received by oral testimony.² The Defence for Nzirorera and for Ngirumpatse oppose the application.³ Further, in an Interoffice-Memorandum dated 20 December 2005, the Prosecution states that it cannot indicate which Prosecution witnesses could be removed from the list as a result of the addition of Witness ADE and that it will only be in a position to do so after the witness has testified. The Chamber will now address these two issues.

DISCUSSION

The Filing of Submissions under Rule 92bis of the Rules

3. The Prosecution contends that it cannot rely on witness statements to anticipate the quality and reliability of the evidence to be given by the witnesses supporting the rape charge. Consequently, the selection process to determine which witness statements will be offered in written form can only be done after assessing the quantity and quality of evidence adduced orally before the Chamber. The Prosecution claims that the preparation of the defence will not be affected by the extension of time sought because the rape witnesses or victims are not anticipated to testify orally until late 2006. In its reply,⁴ the Prosecution presents a list of 21 out of 93 rape witnesses that it intends to call to testify.

4. The Defence for Nzirorera claims that since the Prosecution disobeyed the Chamber's Order by not making the required submission in time, it has waived its right to seek admission of the rape witness evidence pursuant to Rule 92bis of the Rules.

5. When denying the Defence Motion seeking reduction of the number of Prosecution witnesses, the Chamber explicitly took into consideration the Prosecution's submission that the evidence of 86 of the 93 proposed witnesses to be heard on the charge of rape might be admitted in the form of a written statement in lieu of oral testimony in accordance with Rule

¹ See Prosecution Pre-Trial Brief filed on 27 June 2005

² Prosecution Motion to Extend Time to File the Rule 92bis Application Regarding Receipt of Rape Evidence before the Chamber, filed on 10 January 2006.

³ Defence for Nzirorera filed a Reply on 12 January 2006, and Defence for Ngirumpatse filed a Reply on 17 January 2006 (dated 16 January 06).

⁴ Prosecution filed a Reply on 17 January 2006.

92bis of the Rules.⁵ Whereas the Chamber concluded that the Defence motion seeking reduction of the number of Prosecution witnesses was therefore premature, it considered that the Prosecution should file its motions under Rule 92bis as soon as possible within a reasonable time-limit. In that ruling, the Chamber had already rejected the idea that such a date should follow a substantial record of evidence given orally in court. At this stage of the proceedings, the Prosecution must know its case and therefore be able to file its application for admission of written statements pursuant to Rule 92bis of the Rules.

6. In addition, it must be noted that the Chamber has not prejudged the outcome of the Prosecution application for admission in the form of written statements in lieu of oral testimony. Since the witnesses in respect of whom the Prosecution seeks to file an application under Rule 92bis must be listed on the Prosecution witness list,⁶ the filing of these applications could have an effect on the number of witnesses to be heard orally by the Chamber.

7. Due to these particular circumstances of the case, the Chamber reiterates that the applications for admission of rape evidence in the form of written statements should have been filed by 10 January 2006, as ordered. The Chamber nevertheless does not consider that the Prosecution is now barred from seeking the admission of rape victim evidence in written form. Such a conclusion would be contrary to the interests of justice.

8. While there is no doubt that the Prosecution should comply forthwith with the Decision of 13 December 2006, the Chamber is aware that the preparation and filing of these motions will require few days. For these reasons, the Chamber will exceptionally grant a brief extension of time to allow the Prosecution to comply with the Chamber's Order.

The Indication of Witnesses that Could Be Removed From the Prosecution Witness List

9. In its Decision of 13 December 2005, the Chamber concluded that the rights of the Accused will not be prejudiced by the addition of Witness ADE and that it was in the interests of justice to add this witness to the witness list. As suggested by the Prosecution, the Chamber ordered that the Prosecution should notify the Chamber and the Defence which Prosecution witnesses **could** be removed from its witness list as a result of Witness ADE's testimony.

10. The Chamber is of the view that an indication by the Prosecution of the witnesses that could be removed from the witness list is not premature at this stage of the proceedings. Again, the Prosecution is expected to know its case before it goes to trial and therefore should now be in a position to comply with the Chamber's Order of 16 December 2005.

⁵ *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Variance of Prosecution Witness List (TC), 13 December 2005 ("Decision of 13 December 2005"), para. 20.

⁶ See Decision of 13 December 2005, para. 20. See also *Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on the Prosecutor's Motion and Notice pursuant to Rule 92bis(E) (TC), 17 November 2004, para. 5; *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T (joint case), Decision on Prosecutor's Motion for Leave to Be Authorised to Have Admitted the Affidavits Regarding the Chain of Custody of the Diary of Pauline Nyiramasuhuko under Rule 92bis (TC), 14 October 2004, para. 12.

FOR THOSE REASONS THE CHAMBER

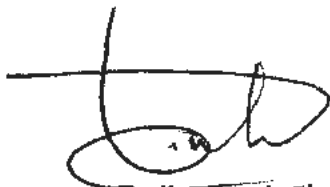
DENIES the Prosecution Motion and **ORDERS** the Prosecution no later than 20 February 2006:

- (i) to file its submissions under Rule 92bis of the Rules;
- (ii) to notify the Chamber and the Defence of all of the Accused which Prosecution witnesses could be removed as a result of Witness ADE's testimony.

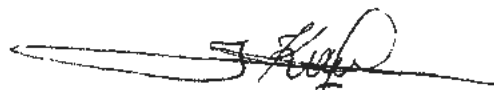
Arusha, 10 February 2006, done in English.



Dennis C. M. Byron
Presiding



Emile Francis Short
Judge



Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

