



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T 26899
30-5-2006
(26850-26857) *Dieng*
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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: 30 May 2006

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

2006 MAY 30 P 5:18
Dieng

**DECISION ON DEFENCE MOTION FOR AN ORDER REQUIRING NOTICE OF
EX PARTE FILINGS AND TO UNSEAL A PROSECUTION CONFIDENTIAL
MOTION**

Article 20 of the Statute

Office of the Prosecutor:

Don Webster
Gilles Lahaie
Alayne Frankson-Wallace
Iain Morley
Sunkarie Ballah-Conteh
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

INTRODUCTION

1. The trial in this case started on 19 September 2005. On 15 December 2005, at the Prosecution's request filed *ex parte*,¹ the Chamber granted the renewal and extension of the transfer of the detained witness Omar Serushago temporarily to the UNDF in Arusha until the completion of his testimony in the current trial.²

2. Following that Order, the Defence for Nzirorera moved the Chamber to unseal the Prosecution Motion to renew and extend transfer Order of Omar Serushago, filed *ex parte* on 8 December 2005.³ It further moved the Chamber for an Order that no confidential *ex parte* motion can be filed by one party without notice of the fact of such filing to the other party at the time the filing is made. The Prosecution requested this motion to be denied in its entirety.⁴

DISCUSSION

3. As this Chamber has stated several times in the present case,⁵ as a general rule, applications must be filed *inter partes*. *Ex parte* applications are nevertheless appropriate, and even required, in certain circumstances. They are not necessarily contrary to the fairness of the proceedings. The fundamental principle is that "*ex parte* proceedings should be entertained only where it is thought to be necessary in the interests of justice to do so – that is, justice to *everyone* concerned – in the circumstances already stated: where the disclosure to the other party or parties in the proceedings of the information conveyed by the application, or of the fact the application itself, would be likely to prejudice unfairly either the party making the application or some person or persons involved in or related to that application."⁶ This Chamber has also held that the principle of *audi alteram partem* requires that filings be disclosed to the opposing party, absent a compelling reason not to do so.⁷

¹ Motion to Renew and Extend Transfer Order of Detained Prosecution Witness Omar Serushago, filed by *ex parte* by the Prosecutor on 8 December 2005.

² Prosecutor v. *Edouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-PT ("*Karemera et al.*"), Decision on Prosecution's Motion to Renew and Extend Transfer Order of Detained Prosecution Witness Omar Serushago (TC), 15 December 2005.

³ Motion For Order Requiring Notice of *Ex Parte* Filings and to Unseal, filed on 19 December 2005.

⁴ Prosecutor's Response, filed 22 December 2005.

⁵ See: *Karemera et al.*, Decision on Motion to Unseal *Ex Parte* Submissions and to Strike Paragraphs 32.4 and 49 from the Amended Indictment (TC), 3 May 2005, paras. 11 and 13; *Karemera et al.*, Decision on Defence Motion for Disclosure of Prosecution *Ex Parte* Motion under Rule 66(C) and Request for Cooperation of a Certain State (TC), 14 October 2005.

⁶ Prosecutor v. *Simic et al.*, Case No. IT-95-9, Decision on (1) Application by Stevan Todorovic to Re-Open the Decision of 27 July 1999, (2) Motion by ICRC to Re-Open Scheduling Order of 18 November 1999, and (3) Conditions for Access to Material (TC), 28 February 2000, para. 40.

⁷ *Karemera et al.*, Decision on Motion to Unseal *Ex Parte* Submissions and to Strike Paragraphs 32.4 and 49 from the Amended Indictment (TC), 3 May 2005, paras. 11 and 13.

4. The Chamber is of the view that the law on the admission of *ex parte* filings is clear and guarantees the right of each party. The Chamber has decided and will continue to decide any *ex parte* filing on a case-by-case basis in accordance with that law. The Defence motion seeking a general declaration of law is not warranted.

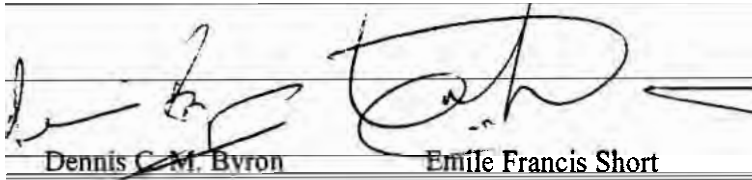
5. In particular, in the Decision of 15 December 2005, the Chamber explicitly addressed the issue of the *ex parte* filing made by the Prosecution and accepted it to be in the interests of justice.⁸

6. The Defence has not submitted any argument to reconsider this Chamber's finding. The Chamber does not find any merit for reconsideration of this finding. The application to unseal the Prosecution Motion to Renew and Extend Transfer Order of Detained Prosecution Witness Omar Serushago, filed on 8 December 2005, falls therefore to be rejected.

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion in its entirety.

Arusha, 30 May 2006, done in English.

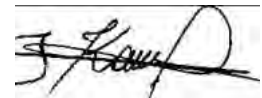


Dennis C.M. Byron

Emile Francis Short

Presiding Judge

Judge



Gberdao Gustave Kam

Judge



[Seal of the Tribunal]

⁸ *Karemera et al.*, Decision on Prosecution's Motion to Renew and Extend Transfer Order of Detained Prosecution Witness Omar Serushago (TC), 15 December 2005, para. 4.