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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr Adama Dieng

Date: 30 June 2006

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JUDICIAL OFFICE/PROFIVES

The PROSECUTOR v. Élie NDAYAMBAJE
(Case No. ICTR-96-8-T)

Joint Case No. ICTR-98-42-T

**DECISION ON NDAYAMBAJE'S MOTION FOR EXTENSION OF TIME
TO REPLY TO THE PROSECUTOR'S RESPONSE
TO ITS MOTION FOR EXCLUSION OF EVIDENCE**

Office of the Prosecutor

Ms Silvana Arbia
Ms Adelaide Whest
Mr Gregory Townsend
Ms Holo Makwaia
Ms Althea Alexis Windsor
Mr Cheikh T. Mara
Ms Astou Mbow, Case Manager

Defence Counsel for Ndayambaje

Mr Pierre Boulé
Mr Frédéric Palardy

to me

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Arlette Ramaroson and Judge Solomy B. Bossa (the “Chamber”);

SEISED of Ndayambaje’s “*Requête en extension de délais afin de déposer la “Réplique à la réponse du Procureur à la requête d’Elie Ndayambaje aux fins d’exclure les témoignages et/ ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l’acte d’accusation”*” with 12 transmission verification reports dated 13 and 14 June 2006 annexed, filed on 20 June 2006 (the “Motion”);

CONSIDERING the «Prosecutor’s Response to the “*Requête en extension de délai afin de déposer la “Réplique à la réponse du Procureur à la requête d’Elie Ndayambaje aux fins d’exclure les témoignages et/ ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l’acte d’accusation”* », filed on 21 June 2006 (the «Prosecutor’s Response»);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”);

NOW DECIDES the Motion, pursuant to Rule 73 (A) of the Rules, on the basis of the written submissions of the Parties.

INTRODUCTION

1. On 31 May 2006, Ndayambaje filed a Motion requesting the Chamber to exclude, in whole or in part, the testimony of some witnesses who testified on facts outside the scope of the Indictment against him (“Ndayambaje’s Motion of 31 May 2006”).¹
2. On 5 June 2006, the CMS directed the Prosecution and any other concerned Party to file a Response to Ndayambaje’s Motion of 31 May 2006 within five days of its communication, and the Defence to file its Reply within five days following such Responses, if it so wished.
3. On 9 June 2006 the Prosecution filed its Response to Ndayambaje’s Motion.

SUBMISSIONS OF THE PARTIES

The Defence

4. The Defence submits that it tried to fax its reply on 13 June 2006 but that it only succeeded to transmit part of it due to communication difficulties.
5. On 14 June 2006, the Defence attempted again to fax its Reply, but failed. The same day, it sent an electronic copy of its Reply to Mr Roger Kouambo, explaining the difficulties in transmitting the signed original by fax.

¹ «Requête d’Elie Ndayambaje aux fins d’exclure les témoignages et/ou les portions de témoignages des témoins entendus au procès sur des faits qui sont en dehors de l’acte d’accusation, » filed on 31 May 2006.

6. The Defence submits that from 15 to 17 June 2006, it attempted to fax its Reply using different fax machines, confirmations of which will be available at the end of the month and therefore could not be annexed to the Motion.

7. Between 17 and 19 June 2006, both Lead and Co-Counsel for the Accused were traveling from Montreal to Arusha to attend trial and thus were unable to file the original Motion before they arrived in Arusha. Accordingly, the Defence filed its Reply on 20 June 2006, together with the Motion.

8. The Defence submits that for reasons beyond its control, it has been unable to file its Reply within the time-limits set and thus prays that the Chamber grant its Motion to file its Reply so that it may be considered during the determination of its Motion of 31 May 2006.

The Prosecution

9. In objecting to the Motion, the Prosecution quotes the Chamber's Decision of 2 March 2001, in which a request for extension of time within which to comply with a court order was granted in the interests of justice, even though the Chamber expressed concern that the Motion was filed after the expiration of the deadline.² The Prosecution submits that the instant Motion has been filed after the expiration of the deadline and should therefore be dismissed.

10. The Prosecution further submits that the Defence has not acted with due diligence because when it failed to fax its Reply, it did not contact the Registry in order to find an alternative solution.

DELIBERATIONS

11. The Chamber notes that, according to the CMS notification dated 5 June 2006, Ndayambaje should have filed his reply to the Prosecution Response to the Motion of 31 May 2006 no later than 14 June 2006. The Chamber further notes that, as evidenced in the annexes to the Motion, the Defence attempted to fax its Reply on 13 June 2006 that is within the time-limits set for such a filing.

12. Further evidence annexed to the Motion shows that the Defence continued its efforts to fax the signed Reply on 14 June 2006, and failed. The Chamber notes that subsequently, the Defence electronically mailed to Mr Roger Kouambo (CMS Coordinator) an unsigned version of its Reply, which was brought to the attention of the Trial Chamber.

13. The Chamber also notes that the Defence submits that it continued attempts to fax its signed Reply between 15 and 17 June 2006, but failed.

14. In the Chamber's opinion, the Defence has demonstrated that it attempted to file its Reply within the time-limits for such filing but failed due to reasons beyond its control. Moreover, after comparing the unsigned version of the Defence Reply which was electronically received by the Registry and then forwarded to the Chamber and the signed version of the Reply filed on 20 June 2006, the Chamber finds that they are one and the same

² *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-27-T, Decision on Prosecutor's Motion for an Extension of Time within which to Comply with the Court Order to File and Indictment of 2 March 2001.

document. Accordingly, the Chamber finds that the Defence was diligent in its attempts to file its Reply within the time-limits set by the Chamber.

15. The Chamber therefore grants the Defence Motion and extends the time for filing its Reply to 20 June 2006 to enable its consideration in the determination of Ndayambaje's Motion of 31 May 2006.

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the Defence Motion and extends the time for filing its Reply to 20 June 2006 to enable its consideration in the determination of Ndayambaje's Motion of 31 May 2006.

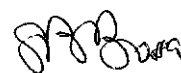
Arusha, 30 June 2006



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

[Seal of the Tribunal]