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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 17 August 2006

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO et al.
Case No. ICTR-97-21-T
Joint Case No. ICTR-98-42-T

JUDICIAL RECORDS/ARCHIVES
2006 AUG 17
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**DECISION ON PAULINE NYIRAMASUHUKO'S EXTREMELY URGENT
MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE A RESPONSE**

Office of the Prosecutor

Ms Silvana Arbia, Senior Trial Attorney
Ms Adelaide Whest, Trial Attorney
Ms Holo Makwaia, Trial Attorney
Mr Gregory Townsend, Trial Attorney
Ms Althea Alexis Windsor, Trial Attorney
Ms Astou Mbow, Case Manager

Defence Counsel

Nicole Bergevin, Lead Counsel
Guy Poupart, Co-Counsel

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 Balungi Bossa (the “Chamber”);

BEING SEIZED of the “*Requête d’extrême urgence en extension de délai aux fins de présenter la réponse à la requête en extrême urgence de Sylvain Nsabimana en admission de la déclaration écrite du témoin JAMI en application de l’Article 92 bis du Règlement de Preuve et Procédure et le cas échéant à toutes autres procédures déposées entre le 18 juillet 2006 et le 7 août 2006*”, filed on 1 August 2006 (the “Motion”);

CONSIDERING the “*Replique de Sylvain Nsabimana a la Requête «d’extrême urgence en extension de délai aux fins de présenter la réponse à la requête en extrême urgence de Sylvain Nsabimana en admission de la déclaration écrite du témoin JAMI en application de l’Article 92 bis du Règlement de Preuve et Procédure et le cas échéant à toutes autres procédures déposées entre le 18 juillet 2006 et le 7 août 2006»*”, filed on 7 August 2006 (“Nsabimana’s Response”);

CONSIDERING the Statute of the Tribunal (the “Statute”), the Rules of Procedure and Evidence (“the Rules”), and the Code of Professional Conduct for Defence Counsel (“the Code”), in particular Article 6;

NOW DECIDES the matter, pursuant to Rule 73 (A), on the basis of the written submissions of the parties.

SUBMISSIONS OF THE PARTIES

Nyiramasuhuko’s Defence

1. The Defence for Nyiramasuhuko submits that it was informed by its Legal Assistant of a memo relating to Nsabimana’s Motion of 31 July 2006¹, setting out the timeframes for Responses/Replies to it.
2. The Defence submits that both Lead Counsel and co-Counsel are, during the judicial break and until 7 August 2006, on vacation outside Canada and have no access to e-mail, including the Motion mentioned above. The Defence submits that its Legal Assistant did not receive Nsabimana’s Motion on the date it was filed, but rather the memo setting out the timeframes for filing Responses and Replies.
3. Given the technical difficulties it has faced, the Defence requests an extension of time to 7 August 2006 to respond to Nsabimana’s Motion, as well as to any other motion(s) filed between 18 July 2006 and 7 August 2006.

¹ *Requête en extrême urgence de Sylvain Nsabimana en admission de la déclaration écrite du témoin JAMI en application de l’Article 92 bis du Règlement de Preuve et Procédure.*

Nsabimana's Response

4. Recalling the events that led to the filing of its Motion, the Defence for Nsabimana objects to Nyiramasuhuko's request, arguing that the reason advanced by Nyiramasuhuko for an extension is not based on any premise serious enough to warrant the extension requested. In support of this, the Defence for Nsabimana underscores Article 6 of the Code of Professional Conduct for Defence Counsel and draws the Chamber's attention to the *Ndayambaje* Decision of 30 June 2006.²

5. The Defence notes that Counsel for the other Parties in the case, who were also on vacation, were able to file Responses to the Motions. In any case, the Defence for Nyiramasuhuko's ability to file this Motion shows its general ability to do so.

6. Moreover, the Defence recalls that the session is expected to resume on 21 August 2006 and that it is required to issue its order of calling witnesses at the latest on 14 August 2006.³ The Defence argues that therefore, it is in the interests of justice that the said Motions be decided upon as matter of extreme urgency, so that it may prepare its case within the time limits prescribed by the Chamber.

HAVING DELIBERATED,

7. The Chamber has considered all the submissions of the Parties. It notes that to date, the Defence of Nyiramasuhuko has not filed any Responses to the various Motions nor has it filed a reply to Nsabimana's Response to the instant Motion.

8. The Chamber recalls Article 6 of the Code of Professional Conduct for Defence Counsel which provides that "Counsel must represent a client diligently in order to protect the client's best interests."

9. The Chamber further recalls the *Ndayambaje* Decision referred to above in which the Chamber decided that for such an extension to be granted, the moving party must demonstrate diligence in its attempts to meet the deadline and also that it was only due to reasons beyond its control that it has failed to do so.

10. The Chamber notes that the Defence requested an extension of time until 7 August 2006 in order to file Response(s) to various Motions filed between 18 July and 7 August 2006. During this period, three Motions have been filed, namely, Nsabimana's Motion to Drop and Add Witnesses, filed on 27 July 2006,⁴ Nsabimana's Motion to Hear

² *Prosecutor v. Ndayambaje*, ICTR-96-8-T (TC), Decision on Ndayambaje's Motion for Extension of Time to Reply to the Prosecutor's Response to its Motion for Exclusion of Evidence, of 30 June 2006, para. 14.

³ See Annexes to the Response.

⁴ *Requête en extrême urgence de Sylvain Nsabimana aux fins de retrait et d'adjonction de témoins sur sa liste Article 73 ter E) du Règlement de Preuve de Procédure.*

Witness AGWA'S Testimony by Video-link, filed on 27 July 2006,⁵ and Nsabimana's Motion to Admit Witness JAMI's Statement under Rule 92bis, filed on 31 July 2006.⁶

The merits of this Motion with regard to all motions filed between 18 July and 7 August 2006

11. Regarding the two Motions filed on 27 July 2006, the Registry's Scheduling Order required Responses by 31 July 2006.⁷ Since the instant Motion was filed on 2 August 2006, two days after the expiration of time within which to file Responses, the Chamber finds that, in effect, there is no time to extend. The Chamber will address below the merits of this Motion with regard to all motions filed between 18 July and 7 August 2006.

12. Regarding the Motion filed on 31 July 2006, the Chamber notes that the Registry's Scheduling Order required Responses by 3 August 2006.⁸ Since the instant Motion was filed on 2 August 2006, one day before expiration of the time limits for filing a response, the Chamber will consider the merits of the request for extension.

13. The Chamber notes that the Defence principally argues that because Counsel was on vacation outside their home country, they were unable to access their e-mails and thus to receive timely information. The Defence further submits that it was only informed of the existence of the Nsabimana Motion of 31 July 2006, because the Legal Assistant had informed it of the relevant Scheduling Order.

14. The Chamber notes that the Defence has not demonstrated any efforts it has made to prevent this kind of situation, even when on vacation. In the Chamber's opinion, any diligent counsel would have made arrangements within the team to ensure they are informed in a timely fashion of all that occurs in the case and thus to ensure timely action can be taken, when necessary. In this context, the Chamber notes that the Accused Nyiramasuhuko has been assigned both a Lead and a Co-counsel. The Chamber further notes that the Defence has not demonstrated that circumstances beyond Counsel's control prevented it from taking action in a timely manner. Accordingly, the Chamber denies the Defence request to extend the deadline within which to file responses to the various Motions filed between 18 July and 7 August 2006.

⁵ *Requête en extrême urgence de Sylvain Nsabimana pour faire témoigner AGWA par vidéo conférence Articles 54, 73 et 71 du Règlement de Preuve et de Procédure (Strictement Confidentiel et sous scellés)*

⁶ *Requête en extrême urgence de Sylvain Nsabimana en admission de la déclaration écrite du témoin JAMI en application de l'article 92bis du Règlement de Preuve et de Procédure (Strictement Confidentiel).*

⁷ See Facsimile Transmission dated 28 July 2006 from Mr. Roger Kouambo, Trial Chamber II Coordinator in the Court Management Section, at para. 2, indicating that "The Parties have until Monday 31st of July 2006 to file their Responses, if any, after receipt of this notification."

⁸ See Facsimile Transmission dated 31 July 2006 from Mr. Roger Kouambo, Trial Chamber II Coordinator in the Court Management Section, at para. 2, indicating that "The Prosecutor and the other Defence teams have three (3) days from the date of this notification to file their Responses, if any, after receipt of this notification."

15. In addition, the Chamber finds the Motion is frivolous, within the purview of Rule 73 (F) of the Rules, and orders that the Registry deny all fees associated with its preparation.

FOR THE ABOVE REASONS, THE TRIBUNAL,

DENIES the Defence request to extend the deadline within which to file responses to the various Motions filed between 18 July and 7 August 2006; and

ORDERS that the Registry deny the Defence of Nyiramasuhuko all fees associated with preparation of the instant Motion.

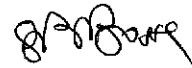
Arusha, 17 August 2006



William H. Sekule
Judge President



Arlette Ramaroson
Judge



Solomy Balungi Bossa
Judge

