

1542/H



Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-44-AR72.7

25 August 2005

(1542/H - 1540/H)

IN THE APPEALS CHAMBER

Before: Judge Mehmet Güney, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Decision of: 25 August 2006

ICTR Appeals Chamber
Date: 25 August 2006
Action: R.D.
Copied To: concerned Judges,
Parties, SIES, LOS, ALOS, ILO,
Archives

PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-AR72.7

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Decision on Prosecution Motion to Withdraw Appeal Regarding the Pleading
of Joint Criminal Enterprise in a Count of Complicity in Genocide

Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. James Stewart
Mr. Don Webster
Ms. Linda Bianchi

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: Tchividjumba Patrice
SIGNATURE: [Signature] DATE: 25/08/06

Counsel for the Defence:

Ms. Dior Diagne Mbaye and Mr. Félix Sow for Édouard Karemera
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mathieu Ngirumpatse
Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Joseph Nzirorera

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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Serious Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) is seized of an interlocutory appeal,¹ filed by the Prosecution, against a decision of Trial Chamber III.² In relation to this appeal, the Appeals Chamber is also seized with a motion filed by the Prosecution to withdraw its appeal.³

BACKGROUND

2. On 12 April 2006, the Appeals Chamber ordered the Trial Chamber to consider in the first instance Joseph Nzirorera's jurisdictional challenge to the pleading of joint criminal enterprise in a count of complicity in genocide.⁴ As a consequence, the Trial Chamber issued a decision on 18 May 2006 holding that the Prosecution could not pursue a count of complicity in genocide through the theory of joint criminal enterprise because complicity in genocide was a mode of liability and not a separate crime.⁵ The Prosecution then sought leave to appeal the Trial Chamber's decision as of right.⁶

3. On 14 July 2006, a Bench of three judges of the Appeals Chamber, Judge Schomburg dissenting, determined that the Prosecution's appeal could proceed as of right and set forth a briefing schedule for the parties.⁷ The Prosecution has not yet filed its appeal brief. Instead, it now seeks leave to withdraw the appeal.⁸ The Prosecution submits that, "upon careful re-assessment of the situation", it no longer views this appeal as necessary in the circumstances of this case.⁹ Though

¹ See generally Decision Pursuant to Rule 72(E) of the Rules of Procedure and Evidence on Validity of the Prosecution Appeal Regarding the Pleading of Joint Criminal Enterprise in a Count of Complicity in Genocide, 14 July 2006 ("Decision on Validity of Appeal").

² *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motions Challenging the Pleading of a Joint Criminal Enterprise in a Count of Complicity in Genocide in the Amended Indictment, 18 May 2006 ("Impugned Decision"). See also *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Separate Opinion of Judge Short on Complicity in Genocide and Joint Criminal Enterprise Theory, 23 May 2006.

³ Prosecutor's Motion to Withdraw Interlocutory Appeal Regarding the Pleading of Joint Criminal Enterprise in a Count of Complicity in Genocide, 27 July 2006, para. 3 ("Prosecution Motion"). Mr. Nzirorera and Mr. Ndirumpatse do not oppose this motion. See Joseph Nzirorera's Response to Prosecution's Motion to Withdraw Interlocutory Appeal, 28 July 2006; *Réponse de Mathieu Ndirumpatse à la Requête du Procureur "sollicitant le retrait de son appel sur l'entreprise criminelle commune en tant que complicité de génocide"*, 7 August 2006. Mr. Karemera has not filed a response.

⁴ *The Prosecutor v. Édouard Karemera et al.*, Case Nos. ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise, 12 April 2006, para. 25 (c).

⁵ Impugned Decision, paras. 2, 8.

⁶ See Prosecutor's Motion for Determination that the Interlocutory Appeal as of Right May Proceed Immediately, For Leave to File a Written Brief on the Merits of the Appeal, and for a Scheduling Order, filed 30 May 2006.

⁷ Decision on Validity of Appeal, paras. 5, 6.

⁸ Prosecution Motion, paras. 1, 19.

⁹ Prosecution Motion, paras. 7-9.

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it still maintains its legal position that complicity in genocide is a separate crime, the Prosecution states that considerations of judicial economy do not justify pursuing the present appeal.¹⁰

DISPOSITION

4. In the view of the Appeals Chamber, a party may withdraw an appeal or a particular ground of appeal simply by giving notice and need not necessarily provide any further justification.¹¹ While it would have been preferable for the Prosecution to carefully assess its position prior to filing the appeal, the Appeals Chamber sees no reason to require it to pursue an appeal it no longer finds necessary in the context of this case. For the foregoing reasons, the Appeals Chamber **GRANTS** the Prosecution's motion to withdraw its appeal and **DECLARES** the appeal moot.

Done in English and French, the English version being authoritative.

Done this 25th day of August 2006,
At The Hague,
The Netherlands.



Judge Mehmet Güney
Presiding

[Seal of the Tribunal]

¹⁰ Prosecution Motion, paras 9, 14.

¹¹ *See, e.g., Laurent Semanza v. The Prosecutor*, Case No. ICTR-97-20-A, Judgement, 20 May 2005, para. 348; *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Decision on Motion of Dragan Jokić for Leave to File Third Amended Notice of Appeal and Amended Appellate Brief, 26 June 2006, para. 13. *See also* Practice Direction on Withdrawal of Pleadings of 24 April 2001.