

2570

ICTR-98-44-T
31-1-2007
(284UB-28440)

284UB
2007
R



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Emile Francis Short
Judge Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 27 September 2006

JUDICIAL RECORDS ARCHIVES
RECEIVED
2007 JAN 31 11 A 10: 24
R

THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON EXTENSION OF TIME TO RESPOND TO THE PROSECUTOR'S
TWO MOTIONS**

Rule 73 of the Rules of Procedure and Evidence

Office of the Prosecutor
Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Sunkarie Ballah-Contch
Takeh Sendze

Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

CIIT06-0094 (E)

1

The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, Case No. ICTR-98-44-T

Translation certified by LSS, ICTR

28442

1. The third session of the trial in the instant case concluded on 14 July 2006. On 11 September 2006 the Prosecutor filed a Motion for a Scheduling Order and for Practice Directives for the Duration of the Trial in order to organise the trial in light of the Tribunal completion strategy.¹ On that same date the Prosecutor filed its Consolidated Response to the Defence Submissions on the Motion for Judicial Notice of Adjudicated Facts.²

2. By two motions filed on 18 and 25 September 2006 respectfully, Édouard Karemera requested the Chamber to grant him an extension of time to respond, running from the date of receipt of the translation into French of the said motions.³ Referring to the Rules of Procedure and Evidence, the Statute of the Tribunal and to "consistent" case law of the Appeal Chamber, the Defence contends that the said translation is crucial to guaranteeing the Accused's right to a just and fair trial.⁴

3. In recent decisions rendered on the basis of Rule 116 of the Rules, which explicitly allows for extension of time limits,⁵ the Appeals Chamber granted certain requests by the Accused to extend time. In the instant case, the Appeals Chamber considered that Counsel to Édouard Karemera operates in French and not in English. The Appeals Chamber held that, in order to be able to make a full answer to the Prosecution's Interlocutory Appeal, the Defence Counsel needs access to French translations of these documents. The Appeals Chamber further held that the lack of access to these translations constitutes good cause, within the meaning of Rule 116 of the Rules, for a reasonable delay in responding to the Prosecution's Interlocutory Appeal.⁶ In each case, the Appeals Chamber held that the respondent must demonstrate good cause for an extension of time, and in particular, that access to translation of certain documents is necessary to enable him to prepare his response to the initial motion.⁷ Where such is not demonstrated, a request to extend time would be denied.⁸

¹ Prosecutor's Motion for a Scheduling Order and for Practice Directives for the duration of the Trial.

² Prosecutor's Consolidated Response to Defence Submissions on the Motion for Judicial Notice of Adjudicated Facts.

³ Édouard Karemera's Motion for Extension of Time to Respond to Prosecutor's Motion for a Scheduling Order and for Practice Directives for the Duration of the Trial, filed on 18 September 2006; Édouard Karemera's Motion for Extension of Time to Reply to Prosecutor's Consolidated Response to Defence Submissions on the Motion for Judicial Notice of Adjudicated Facts, filed on 25 September 2006. See Prosecutor's responses filed on 19 and 27 September 2006.

⁴ Édouard Karemera's Reply to Prosecutor's Response to Karemera's Motion for Extension of Time to Respond to Prosecutor's Motion for a Scheduling Order, filed on 20 September 2006.

⁵ Rule 116 of the Rules of Procedure and Evidence:

(A) The Appeals Chamber may grant a motion to extend a time limit upon a showing of good cause.

(B) Where the ability of the accused to make full answer and defence depends on the availability of a decision in an official language other than that in which it was originally issued, that circumstance shall be taken into account as a good cause under the present Rule;

⁶ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-A (*Karemera et al.*), Decision on Request for Extension of Time (AC), 27 January 2006, paras. 4 and 5; *Karemera et al.*, Decision on Édouard Karemera's Request for Extension of Time to Respond to the Prosecution's Interlocutory Appeal (AC), 4 April 2006, para. 3.

⁷ *Karemera et al.*, Decision on Request for Extension of Time (AC), 27 January 2006, para. 5; *Karemera et al.*, Decision on Request for Extension of Time (AC), 24 March 2006, para. 2; *Karemera et al.*, Decision on

28/09/06

4. Defence Counsel are representing the Accused before this Tribunal. Therefore, trial documents must first be understood by them since otherwise the rights of the Accused as set out in Article 20(4) of the Statute and interpreted by the Tribunal's case law would be impaired.⁹ In this regard, the Chamber notes the Tribunal's practice of assigning defence teams composed of bilingual counsel or legal assistants in order to limit delays in proceedings resulting from the lack of access to translations.¹⁰ Thus, a trial document not available in a language understood by the Accused should not serve as pretext for requesting an extension of time, in particular when Defence Counsel are capable of properly assisting the Accused.

5. Therefore, the Chamber is bound to consider the instant requests in light of these practices and, as the Appeals Chamber itself has ruled and directed, any extension of time should take into account the circumstances of the instant case and the grounds pleaded by the moving party.

6. In the instant case, the Chamber has on several occasions noted that Édouard Karemera's Defence team includes a bilingual French-English legal assistant and that both Lead Counsel and Co-Counsel understand English and are capable of working in that language.¹¹ Moreover, it should be recalled that the date of filing of response to the Prosecutor's motion for judicial notice of facts of common knowledge and adjudicated facts was determined on consent by the parties.¹²

7. In the Chamber's view, the Accused therefore has sufficient assistance to enable him to understand the motions in question. The Chamber also notes that a draft translation of the Prosecutor's motions has just been served on the parties. The fact that the Defence does not have the certified translation of the motions filed by the other party in the instant case in no way relieves it of its obligation to file its reply within the five-day time limit prescribed in Rule 73(E) of the Rules. No extension of time on this basis could therefore be allowed.

8. The Chamber expresses some concern regarding the repeated requests to extend time, which are filed, without justification, at the expiration of time for filing of Édouard Karemera's response to the pending motions. Such practices affect the effective management of proceedings. Defence Counsel are urgently called upon to ensure that such repeated and last-minute requests do not undermine the administration of justice and the Accused's basic rights, including his right to be tried within a reasonable timeframe.

Édouard Karemera's Request for Extension of Time to Respond to the Prosecution's Interlocutory Appeal (AC), 4 April 2006, para. 3.

⁸ *Idem*.

⁹ *Karemera et al.*, Decision on extension of time (TC), 5 October 2005.

¹⁰ See, for instance, *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-I, Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004, para. 1.

¹¹ See, for instance, in this regard, Édouard Karemera's Reply to Prosecutor's Response to Karemera's Motion for Extension of Time to Respond to Prosecutor's Motion for a Scheduling Order, which demonstrated that the Defence Counsel understand the purport of the Prosecutor's Motion for a Scheduling Order and for Practice Directives for the duration of the Trial.

¹² See Scheduling Order, 17 July 2006.

9. However, since a brief extension of time would not affect the resumption of proceedings on 23 October 2006 and considering the importance of the Prosecutor's two motions, the Chamber is prepared to partially grant Édouard Karemera's requests.

FOR THESE REASONS, THE CHAMBER

- I. **PARTIALLY GRANTS** Édouard Karemera's requests to extend time; and
- II. **AUTHORISES** the Defence Counsel for each of the Accused to file responses to the Prosecutor's Motion for a Scheduling Order and for Practice Directives for the Duration of the Trial and the Prosecutor's Consolidated Response to Defence Submissions on the Motion for Judicial Notice of Adjudicated Facts no later than 2 October 2006; and the Prosecution to file its reply no later than 6 October 2006, with effect from the date of filing of the Defence responses.

Arusha, 27 September 2006

[Signed]
Dennis C.M. Byron
Presiding

[Signed]
Emile Francis Short
Judge

[Signed]
Gberdao Gustave Kam
Judge

[Seal of the Tribunal]
