



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
sitting pursuant to Rule 15bis of the Rules of Procedure and Evidence

Registrar: Adama Dieng

Date: 2 May 2007

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T**

SCHEDULING ORDER FOR THE RESUMPTION OF THE TRIAL

Rules 15 bis (F) and 54 of the Rules of Procedure and Evidence

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1. The trial in this case started on 19 September 2005 before Trial Chamber III composed of Judges Dennis C. M. Byron, presiding, Emile Francis Short and Gberdao Gustave Kam. Thus far, four trial sessions have been held for the presentation of the Prosecution case, during which 13 witnesses have been heard.

2. On 19 January 2007, Judge Short decided to withdraw from the case. Although the remaining Judges decided on the continuation of the proceedings with a substitute judge,¹ the trial could not resume as a result of the appeals filed against that decision by Mathieu Ngirumpatse and Joseph Nzirorera.² On 20 April 2007, the Appeals Chamber dismissed their applications and affirmed the Trial Chamber's decision to continue the proceedings with a substitute judge.³

3. According to the letter of appointment of the United Nations Secretary General and at the request of the President of the Tribunal, Judge Vagn Joensen is assigned to the present case as substitute judge. However, according to Rule 15 *bis* (D) of the Rules of Procedure and Evidence, he can join the bench only after he has certified that he has familiarised himself with the record of the proceedings. While this familiarization process is currently ongoing, there is an urgent need to schedule the resumption of the trial in order to minimize any delay in the trial of the co-Accused persons and ensure the proper administration of justice. Since the President authorized the Trial Chamber, composed of Judges Byron and Kam, to conduct routine matters, such as the delivery of decisions, in the absence of the substitute judge, the scheduling of the trial may be decided at this stage.⁴

4. The parties have been consulted concerning the suitable time-frame for resuming the trial. Each of them expressed a strong view that sufficient time should be given to the substitute judge to familiarize himself with the record of the proceedings and ensure that the

¹ *Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera* ("Karemera *et al.*"), Case No. ICTR-98-44-T, Decision on Continuation of the Proceedings (TC), 6 March 2007.

² See Rules of Procedure and Evidence, Rule 15 *bis* (D): "If, in the circumstances mentioned in the last sentence of paragraph (C), the accused withholds his consent, the remaining Judges may nonetheless decide to continue the proceedings before a Trial Chamber with a substitute Judge if, taking all the circumstances into account, they determine unanimously that doing so would serve the interests of justice. This decision is subject to appeal directly to a full bench of the Appeals Chamber by either party. If no appeal is taken or the Appeals Chamber affirms the decision of the Trial Chamber, the President shall assign to the existing bench a Judge, who, however, can join the bench only after he or she has certified that he or she has familiarised himself or herself with the record of the proceedings. Only one substitution under this paragraph may be made."

³ *Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals Pursuant to Rule 15*bis* (D) (AC), 20 April 2007.

⁴ See Rules of Procedure and Evidence, Rule 15 *bis* (F); and Interoffice Memorandum from the President to Judge Byron, filed on 13 March 2007.

resumption of the trial be not decided hastily, thereby impairing the rights of the Accused to prepare their defence. The Chamber fully shares these views.

5. As previously stated and as affirmed by the Appeals Chamber,⁵ the familiarization process is one of the criteria to be taken into account when deciding on the continuation of the proceedings. There is, however, no mathematical or standard rule as how this familiarisation process should take place. Rather, there are different methods and means through which it can be done relying upon transcripts, audio and video-records of the testimonies, documents entered into exhibits and decisions.⁶ The length of the familiarization process will also depend on the particularities of each case.

6. In the *Nyiramasuhuko et al.* case, Judge Solomy Balungi Bossa certified that she had familiarized herself with the record of the proceedings less than two months after her assignment to the Tribunal and while 23 witnesses had already been heard by Trial Chamber II over 107 trial days.⁷ Judge Emile Francis Short certified that he had familiarized himself with the record of the proceedings in the *Bizimungu et al.* case, less than 15 days after his assignment to the Tribunal and while 28 witnesses had been heard by Trial Chamber II over 112 trial days.⁸

7. In the present case, the Chamber is of the view that the substitute judge should have little difficulty mastering and becoming familiar with the record of the proceedings by the end of May. In any event, it belongs to the substitute judge, who is appointed on the basis of his high moral character, impartiality and integrity and professional experience at the highest judicial offices, to certify whether he is familiar with the case. Should he consider that he is not familiar within the above mentioned time-estimate, this will be a new circumstance requiring the Chamber to reconsider its scheduling order and postpone the resumption of the trial.

⁵ *Karemera et al.*, Case No. ICTR-98-44-AR15bis.2, Reasons For Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004, paras. 57-58; *Karemera et al.*, Case No. ICTR-98-44-AR15bis.3, Decision on Appeals pursuant to Rule 15bis (D) (AC), 20 April 2007, para. 43.

⁶ *Karemera et al.*, Case No. ICTR-98-44-AR15bis.2, Reasons For Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirorera's Motion for Leave to Consider New Material (AC), 22 October 2004, paras. 57-58.

⁷ *Prosecutor v. Nyiramasuhuko et al.*, Joint Case No. ICTR-98-42-T, Certification in the Matter of Proceedings under Rule 15 bis (D), 5 December 2003. Judge Bossa was assigned to Trial Chamber II by the President on 20 October 2003.

⁸ *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Certification in the Matter of Proceedings under Rule 15 bis (D), 3 June 2004. Judge Short was assigned to Trial Chamber II by the President on 18 May 2004.

8. Such an approach will also guarantee that the rights of the Accused are fully protected. The Chamber must ensure that the Accused will benefit from a fair trial, including their right to be tried without undue delay.⁹ This element, as well as the fact that the Accused are currently detained while the proceedings are ongoing, must be taken into account when deciding the resumption of the trial and what period of time would be reasonable for the substitute judge to familiarise himself with the proceedings.

9. Concerning the preparation of the Defence, the Chamber notes that as a result of Judge Short's withdrawal, the Defence has enjoyed a break of more than four months since the last trial session. It is not conceivable that the Defence has not optimized this opportunity in order to keep conducting investigations and prepare its case, including the cross-examination of the forthcoming Prosecution witnesses. In addition, the Defence will now have an additional month to prepare the cross-examination of the forthcoming Prosecution witnesses.

FOR THESE REASONS, the CHAMBER

- I. ORDERS** that the Prosecution case resume on 11 June 2007 until 3 August 2007;
- II. ORDERS** that the Prosecution file a list of the witnesses it intends to call during the aforementioned period, including the expected order of appearance, by 7 May 2007.

Arusha, 2 May 2007, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

[Seal of the Tribunal]

⁹ *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-A15bis, Decision in the Matter of Proceedings Under Rule 15bis (D) (AC), 24 September 2003, para. 24: "a trial is inequitable if it is too long drawn out. Speed, in the sense of expeditiousness, is an element of an equitable trial."