

ICTR-98-44-T
31-10-2007
(31741 - 31738)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

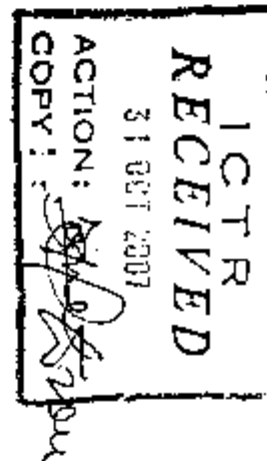
Case No. ICTR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 5 September 2007



THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA**

DECISION ON DEFENCE MOTIONS FOR EXTENSION OF TIME
Rule 73 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Alayne Frankson-Wallace
Iain Morley
Gerda Visser
Saidou N'Dow
Sunkarie Ballah-Conteh
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

1. At the Status Conference of 1 August 2007, the Chamber ordered the parties to submit no later than 23 August 2007 their observations on the following two issues: whether the Chamber should reconsider the exclusion of Prosecution Witness GAY's testimony, on the one hand, and, on the other hand, whether the Chamber should reconsider the admission of the written statements of the 16 sexual violence witnesses¹ ("Order of 16 August 2007").

2. On 20 August 2007, the Defence for Joseph Nzirorera prayed the Chamber to grant it an extension of time to allow it to obtain a copy of the statements in question.² In its Motion, the Defence explained that it could not have access to the hard copy of the documents disclosed to it, and that the said documents were located in Arusha; that nevertheless, the Registry had to communicate the said statements via express courier. Accordingly, the Defence prays the Chamber to grant it a 5-day extension of time from reception of the said documents by Counsel for the Defence to submit its observations pursuant to the Order of 16 August 2007.

3. In his Response of 20 August 2007, the Prosecutor indicates that he is not opposed to such a request, but prays the Chamber to render its decision as soon as possible on a pending Motion by Joseph Nzirorera to dismiss Count 5 against the Accused in the instant case.³ He indicates that, where applicable, the Chamber should grant additional time to the parties to enable them to submit their observations pursuant to the Order of 16 August 2007, after the Chamber must have ruled on Nzirorera's Motion to dismiss Count 5.

4. On 22 August 2007, the Defence for Mathieu Ndirumpatse equally filed a motion before the Chamber for extension of time to file its submissions pursuant to the Order of 16 August 2007.⁴ The Defence prays the Chamber to grant it an extension of time to enable it to receive the French translation of the Prosecution Motion for certification to appeal the Oral Decision of the Chamber excluding the testimony of Witness GAY,⁵ the Prosecutor's observations entitled "Prosecutor's Submissions Pursuant to Trial Chamber III Order of 15 August 2007 concerning Sexual Violence Witnesses",⁶ as well as Joseph Nzirorera's Motion to dismiss Count 5 of the allegations against the Accused and the Prosecutor's Response to this Motion.⁷ The Defence submits that it is extremely important for it to have these documents in French in order to avoid any misinterpretation in the responses it intends to submit and with a view not to compromise the interests of Mathieu Ndirumpatse.

¹ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T (Karemera et al.), Interim Order to the Parties to File Submissions Regarding Reconsideration of the Chamber's Exclusion of Witness GAY's Testimony and the Admission of Written Statements of the 16 Sexual Violence Witnesses Pursuant to Rule 92 bis (Trial Chamber), 16 August 2007.

² Motion for Extension of Time to Comply with Interim Order to the Parties of 16 August 2007, filed on 20 August 2007.

³ Prosecutor's Response filed on 20 August 2007.

⁴ Ndirumpatse's Motion for Extension of time to Comply with Trial Chamber III Order of 16 August 2007 Concerning Sexual Violence Witnesses, filed on 22 August 2007.

⁵ Prosecutor's Application for Certification to Appeal the Oral Decision on Nzirorera's Motion to Preclude Testimony of Witness GAY, filed on 6 August 2007.

⁶ Observations filed on 15 August 2007.

⁷ Joseph Nzirorera's Motion to Dismiss Count Five, filed on 25 June 2007; the Prosecutor's Response was filed on 2 July 2007.

5. The Chamber notes that since the Defence filed the above Motions, the Chamber has ruled on the Motion to dismiss Count 5⁸ and that the documents in question have indeed reached the Defence, and that Counsel for Joseph Nzirorera has filed his observations pursuant to the Order of 16 August 2007 within five working days after receiving the documents.⁹ In the interests of justice, the Chamber will consider these observations in its upcoming decision on reconsideration of exclusion of Witness GAY's testimony and the admission of written statements from some Prosecution witnesses in lieu of their live testimony.

6. The Chamber further holds that Mathieu Ndirumpatse's Motion for extension of time is not founded.

7. The Chamber recalls the jurisprudence of the Appeals Chamber requiring a showing of good cause by the applicant requesting an extension of time and, in particular, a showing that access to the translation of certain documents into his language is needed to enable him to respond to the initial motion.¹⁰ Failing this, the extension of time is denied him.¹¹ The Chamber also recalls that Counsel have the duty to represent the Accused in proceedings before this Tribunal. Filings must first be understood by Counsel, without infringing the rights of the Accused as enshrined in Article 20(4) of the Statute and interpreted by the jurisprudence of this Tribunal.¹² In this regard, the Chamber notes the Tribunal's practice of having Defence teams with bilingual counsel or legal assistants in order to reduce delays in the proceedings caused by inability to obtain translations.¹³ The unavailability of a procedural document in the accused's language should not be used as a pretext for extending the time limit of proceedings, particularly when counsel are capable of assisting the accused sufficiently.

8. In the instant case, the Chamber is not persuaded that the Defence for Mathieu Ndirumpatse needs to have the French translation of the above motions in order to file its observations pursuant to the Order of 16 August 2007. First, it appears that part of the Prosecutor's submissions of 15 August 2007 repeats the content of a Memorandum by the Prosecutor, the French translation of which already exists.¹⁴ Second, the Chamber notes that the Defence for Mathieu Ndirumpatse is requesting the translation of a motion by Joseph Nzirorera that it had already joined in the past.¹⁵ It seems to be inconceivable that his Counsel

⁸ *Karemera et al.*, Decision on Joseph Nzirorera's Motion to Dismiss Count 5 (Trial Chamber), 21 August 2007.

⁹ Joseph Nzirorera Submissions on Reconsideration of Admission of Witness Statements of Sexual Assault Victims, filed on 3 September 2007.

¹⁰ *Karemera et al.*, Decision on Request for Extension of Time (AC), 27 January 2006, para. 5; Decision on Request for Extension of Time (AC), 24 March 2006, para. ; Decision on Édouard Karemera's Request for Extension of Time to Respond to the Prosecution's Interlocutory Appeal (AC), 4 April 2006, para. 3.

¹¹ *Idem.*

¹² *Karemera et al.*, *Décision relative à la requête de la Défense en extension de délai* (Trial Chamber, French only), 5 October 2005.

¹³ See, for example, *The Prosecutor v. Aloys Simba*, Case No. ICTR-01-76-I, Decision on Defence Request for Protection of Witnesses (Trial Chamber), 25 August 2004, para. 1.

¹⁴ Prosecutor's Memorandum filed on 7 May 2007 [*sic*] (Shortlist of prospective Prosecution witnesses for upcoming trial sessions).

¹⁵ *Mémoire pour M. Ndirumpatse sur la Joseph Nzirorera's Motion to Dismiss Count Five*, filed on 2 July 2007 (French only).

filed a motion for a joinder without having understood the substance thereof. It should further be noted that the Chamber has already rendered a decision on the motion in question, dismissing the Defence request.¹⁶ Lastly, the Chamber notes that Mathieu Ndirumpatse's Defence team is composed of a legal assistant who is bilingual in French and English, and that Lead Counsel as well as Co-Counsel understand English and are capable of working in that language.

FOR THESE REASONS, THE CHAMBER

- I. **Grants** Joseph Nzirorera's Motion for extension of time but **notes** that it has become pointless;
- II. **Dismisses** Mathieu Ndirumpatse's Motion for extension of time; and
- III. **Orders** Counsel for Mathieu Ndirumpatse to file his observations pursuant to the Chamber's Order of 16 August 2007 no later than 10 September 2007.

Arusha, 5 September 2007, done in English and French, the French being authoritative.

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Judge Gberdao Gustave Kam

[Signed]

With the agreement and
on behalf of
Judge Vagn Joensen
(absent at the time
of signature)

[Seal of the Tribunal]



¹⁶ *Karemera et al., Decision on Joseph Nzirorera's Motion to Dismiss Count 5* (Trial Chamber), 21 August 2007.