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Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

ICTR-98-44-AR73.10

05 October 2007

[1961/H - 1957/H]

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, Presiding
Judge Mohamed Shahabuddeen
Judge Liu Daqun
Judge Theodor Meron
Judge Wolfgang Schomburg

Registrar: Mr. Adama Dieng

Decision of: 5 October 2007

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-AR73.10

ICTR Appeals Chamber

Date: 5 October 2007
Action: P.T.

Copied To: concerned Judges,
Parties, SLOS, LOS, ALOS,
LOS, Archives, P.T. Chamber

DECISION ON NGIRUMPATSE'S MOTION FOR
RECONSIDERATION

Office of the Prosecutor:

Mr. James Stewart
Mr. Don Webster
Mr. George W. Mugwanya
Ms. Inneke Onsea

International Criminal Tribunal for Rwanda Tribunal pénal international pour le Rwanda	
CERTIFIED TRUE COPY OF THE ORIGINAL. SEEN BY ME. COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS	
NAME / NOM: <i>Patrice Tchidimbo</i>	
SIGNATURE: <i>Patrice Tchidimbo</i>	DATE: 05/10/07

Counsel for the Defence:

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

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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 Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively);

NOTING that, on 27 June 2007, Trial Chamber III of the Tribunal ("Trial Chamber") orally denied Mr. Nzirorera's request to adjourn the proceedings until he would be medically fit to attend his trial and decided to proceed with Witness Twahirwa's cross-examination in the absence of Mr. Nzirorera;¹

NOTING that, on 28 June 2007, upon Mr. Nzirorera's request ("Nzirorera's Oral Request"), the Trial Chamber reconsidered in part its decision to proceed with the cross-examination of Witness Twahirwa in Mr. Nzirorera's absence, by ruling that the cross-examination of Witness Twahirwa by Mr. Nzirorera should be stayed until his return to court but that Witness Twahirwa's cross-examination by Mr. Nzirorera's co-accused, Mr. Ndirumpatse and Mr. Karemera, could proceed in his absence ("Oral Decision of 28 June 2007");²

NOTING the "Decision on Joseph Nzirorera's Motion for Stay of Proceedings While He Is Unfit to Attend Trial or Certification to Appeal - Article 20 of the Statute, Rule 73(B) of the Rules of Procedure and Evidence", issued by the Trial Chamber on 11 July 2007 ("Trial Chamber's Decision"), which set out the written reasons for its Oral Decision of 28 June 2007 and granted Mr. Nzirorera certification to appeal;³

NOTING "Joseph Nzirorera's Appeal from Decision to Proceed in the Absence of the Accused", filed on 16 July 2007 ("Nzirorera's Appeal");

NOTING that, on 18 July 2007, Mr. Ndirumpatse and Mr. Karemera, filed motions seeking *inter alia* an extension of time to file their appeals against the Trial Chamber's Decision until receipt of a French translation thereof;⁴

¹ See T. 27 June 2007, p. 11.

² See T. 28 June 2007, p. 7.

³ See Trial Chamber's Decision, paras. 5, 22-26.

⁴ *Requête de M. Ndirumpatse aux fins d'Extension du délai de dépôt de son Mémoire d'Appel contre la Décision 'on Joseph Nzirorera's Motion for Stay of Proceedings While He Is Unfit to Attend Trial or Certification to Appeal' 18 July 2007* ("Ndirumpatse's Motion for Extension of Time"); *Requête d'Édouard Karemera pour extension de délai suite à la décision rendue 'on Joseph Nzirorera's Motion for Stay of Proceedings While He Is Unfit to Attend Trial or Certification to Appeal', 18 July 2007* ("Karemera's Motion for Extension of Time").

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NOTING that Mr. Ngirumpatse and Mr. Karemera filed their appeals against the Trial Chamber's Decision on 14 August 2007 and on 21 August 2007, respectively;⁵

NOTING that in its "Decision on Requests for Extension of Time" issued on 29 August 2007 ("Impugned Decision"), the Appeals Chamber found that Mr. Karemera and Mr. Ngirumpatse had not received certification to appeal against the Trial Chamber's Decision and dismissed their Motions for Extension of Time and their appeal briefs;⁶

BEING SEIZED of the "*Requête de M. Ngirumpatse aux fins de reconsidération de la décision de la Chambre 'on Requests for Extension of Time'*", filed on 30 August 2007 ("Motion for Reconsideration");

NOTING that the Prosecution did not respond to the Motion for Reconsideration;

NOTING ALSO the "*Mémoire en intervention pour M. Ngirumpatse au soutien de l'appel de Nzirorera contre la décision 'on Joseph Nzirorera's Motion for Stay of Proceedings while He Is Unfit to Attend Trial or Certification to Appeal'*", also filed on 30 August 2007 ("Brief");

NOTING that, in his Motion for Reconsideration, Mr. Ngirumpatse submits that the Decision on Requests for Extension of Time warrants reconsideration since (i) the Trial Chamber's Decision intended to set general standards applicable to all situations;⁷ (ii) during the hearing of 28 June 2007, Mr. Ngirumpatse joined Nzirorera's Oral Request for reconsideration and certification to appeal;⁸ (iii) the terms of the Oral Decision of 28 June 2007 and of the Trial Chamber's Decision were ambiguous as to who was granted certification to appeal;⁹ (iv) it is not in the interests of the proper administration of justice to preclude Mr. Ngirumpatse from appealing the Trial Chamber's Decision;¹⁰

RECALLING that the Appeals Chamber may reconsider a previous interlocutory decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary in order to prevent an injustice;¹¹

⁵ *Mémoire d'appel pour M. Ngirumpatse contra la Décision 'on Joseph Nzirorera's Motion for Stay of Proceedings While He Is Unfit to Attend Trial or Certification to Appeal'* 14 August 2007; *Mémoire d'appel relatif à la décision rendue le 11 juillet 2007 par la Chambre III. Sur [sic] la suspension de la procédure lorsque l'accusé n'est pas en mesure d'assister au procès*, 21 August 2007.

⁶ Impugned Decision, 29 August 2007, para. 7.

⁷ Motion for Reconsideration, paras. 13, 18, 20.

⁸ Motion for Reconsideration, paras. 14-16.

⁹ Motion for Reconsideration, paras. 17-18.

¹⁰ Motion for Reconsideration, paras. 20-21.

¹¹ See, e.g., *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR11bis, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial

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CONSIDERING that, it is clear from the title and the introduction¹² of the Trial Chamber's Decision that the Trial Chamber was seized of and ruled only on Mr. Nzirorera's motion for stay of proceedings or certification to appeal;

CONSIDERING also that, throughout its Decision, the Trial Chamber referred to "his [Nzirorera's] motion",¹³ and that, although the Trial Chamber noted that Mr. Karemera and Mr. Ngirumpatse "supported" Nzirorera's Oral Request,¹⁴ it made use of the singular in the disposition;¹⁵

CONSIDERING that it appears therefore that the Trial Chamber set out guidelines on how to proceed in the absence of an accused only in so far as these were necessary to decide upon Nzirorera's Oral Request for reconsideration;

FINDING that Mr. Ngirumpatse fails to show a clear error of reasoning in the Impugned Decision;

FINDING ALSO that Mr. Ngirumpatse does not demonstrate that reconsideration of the Impugned Decision is necessary in order to prevent an injustice;

FINDING THEREFORE that none of the arguments raised in the Motion for Reconsideration justifies a reconsideration of the Impugned Decision;

NOTING ALSO that, in his Brief, Mr. Ngirumpatse submits that nothing prevents him from intervening in support of Nzirorera's Appeal¹⁶ or the Appeals Chamber from adopting, *proprio motu*, the reasoning exposed in his Brief;¹⁷

CONSIDERING that Mr. Ngirumpatse has failed to demonstrate that his Brief would assist the Appeals Chamber in its determination of Nzirorera's Appeal;

Chamber to Consider Referral to a National Jurisdiction, 21 August 2007, p. 3; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73(C), Decision on Motions for Reconsideration, 1 December 2006, para. 6; *Juvénal Kajelijeli v. The Prosecutor*, Case No. ICTR-98-44A-A, Judgement, 23 May 2005, para. 203.

¹² Throughout the introduction, the Trial Chamber only refers to Nzirorera's Oral request (see Trial Chamber's Decision, para. 3, footnote 5).

¹³ See Trial Chamber's Decision, paras. 6, 22.

¹⁴ See Trial Chamber's Decision, paras. 7-8, 23.

¹⁵ See Trial Chamber's Decision, paras. I-III of the dispositive part: "The Chamber [...] rejects the Defence Request to stay proceedings in the absence of Joseph Nzirorera; [...] grants in part the Defence Request to reconsider its Decision so that the cross-examination by Defence Counsel for Joseph Nzirorera of Witness [Twahira] be postponed, [...] grants the Defence Motion for certification to appeal the present Decision in all aspects, including the standards set out by this Chamber to continue hearing evidence in the absence of an accused".

¹⁶ See Brief, para. 11.

¹⁷ See Brief, para. 12.

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FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion for Reconsideration and **REJECTS** Ndirumapfse's Brief.

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

Dated this 5th day of October 2007,
at The Hague, The Netherlands.



[Seal of the Tribunal]

A handwritten signature in black ink, which appears to read "Fausto Pocar".

Fausto Pocar
Presiding Judge