



**Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda**

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

**DECISION ON NZIRORERA'S MOTION TO REJECT
PROSECUTION RESPONSE**

Office of the Prosecutor:

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

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 Nimy Mayidika Ngimbi for Mr. Joseph Nzirorera

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 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 Trial Chamber III on 11 July 2007 (“Trial Chamber’s Decision”), which set out the written reasons for denying Joseph Nzirorera’s oral request to stay the proceedings in his absence and granted him certification to appeal;¹

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. Nzirorera’s co-accused, Mathieu Ngirumpatse and Édouard 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;²

NOTING that, on 23 July 2007, the Prosecution filed a response to Ngirumpatse’s Motion for Extension of Time;³

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;⁴

¹ See Trial Chamber’s Decision, paras. 5, 22-26.

² *Requête de M. Ngirumpatse 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 (“Ngirumpatse’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”) (jointly, “Motions for Extension of Time”).

³ Prosecutor’s Response to *Requête de M. Ngirumpatse aux fins d’extension du délai de dépôt de son Mémoire d’Appel contre la décision* [sic] on Joseph Nzirorera’s Motion for Stay of Proceedings while he is Unfit to Attend Trial or Certification to Appeal’ 23 July 2007 (“Response to Ngirumpatse’s Motion for Extension of Time”). The Appeals Chamber also notes the electronic mail exchange on 25 July 2007 between the Prosecution and the Coordinator of the Appeals Chamber Support Sub-Unit, by which the Prosecution inquired about the deadlines to file a consolidated response.

⁴ *Mémoire d’appel pour M. Ngirumpatse contre 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.

NOTING the “Prosecutor’s Response to Nzirorera, Ngirumpatse and Karemera’s Appeal from Decision to Proceed in the Absence of the Accused”, filed on 27 August 2007 (“Prosecution Response”);

NOTING that Mr. Nzirorera replied to the Prosecution Response on 28 August 2007;⁵

RECALLING the Decision on Requests for Extension of Time, issued on 29 August 2007, in which the Appeals Chamber found that Mr. Karemera and Mr. Ngirumpatse were not granted certification to appeal and therefore dismissed their Motions for Extension of Time and rejected their appeal briefs;⁶

BEING SEIZED of the “Motion to Reject Prosecution Response to Joseph Nzirorera’s Appeal from Decision to Proceed in the Absence of the Accused”, filed by Mr. Nzirorera on 30 August 2007 (“Motion”), which requests the Appeals Chamber to reject the Prosecution Response as untimely filed;⁷

NOTING the Prosecution Response to Nzirorera’s “Motion to Reject Prosecution Response to Joseph Nzirorera’s Appeal from Decision to Proceed in the Absence of the Accused”, filed on 4 September 2007;

NOTING that Mr. Nzirorera submits that although the Prosecution Response was due on 26 July 2007, it was only filed on 27 August 2007;⁸ and that the Prosecution did not apply for an extension of time;⁹

NOTING that, pursuant to paragraph 10 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, the Prosecution Response was to be filed no later than 26 July 2007;

RECALLING that Rule 116 of the Rules of Procedure and Evidence of the Tribunal allows for extensions of time upon a showing of good cause;

CONSIDERING that, in its Response, the Prosecution did not show good cause for its late filing;

⁵ Reply Brief: Joseph Nzirorera’s Appeal from Decision to Proceed in the Absence of the Accused, 28 August 2007.

⁶ Decision on Requests for Extension of Time, 29 August 2007, para. 7.

⁷ Motion, paras. 5, 8.

⁸ Motion, paras. 2, 4.

⁹ Motion, paras. 3, 6.

CONSIDERING, however, that in its Response to Ngirumpatse's Motion for Extension of Time, the Prosecution *inter alia* had requested the Appeals Chamber to grant an extension of time to enable it to file "a consolidated response to all defense briefs";¹⁰

CONSIDERING that, in doing so, the Prosecution assumed that the certification to appeal had been extended to Mr. Karemera and Mr. Ngirumpatse;

CONSIDERING also that the exchange between the Prosecution and the Coordinator of the Appeals Chamber Support Sub-Unit on 25 July 2007¹¹ indicates that the Prosecution acted in good faith when it waited for Mr. Karemera and Mr. Ngirumpatse to file their appeals before it filed its Response;

FINDING THEREFORE that, in these circumstances, by requesting an extension of time to submit a consolidated response within the prescribed time limits, the Prosecution sought to comply with the deadlines;

RECALLING that, pursuant to paragraph 19 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, the Appeals Chamber may recognize as validly done any act done after the expiration of a time limit;

FOR THE FOREGOING REASONS,

HEREBY DISMISSES the Motion and **RECOGNIZES** the Prosecution's Response as validly filed.

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

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

Fausto Pocar
Presiding Judge

[Seal of the Tribunal]

¹⁰ Response to Ngirumpatse's Motion for Extension of Time, pp. 5-6.

¹¹ See *supra* footnote 3.