



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
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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 Gberlao Gustave Kam
Judge Vagn Joensen
Registrar: Adama Dieng
Date: 29 January 2008

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THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA**

**DECISION ON "LA SECONDE REQUÊTE D'ÉDOUARD KAREMERA EN PROROGATION
DE DÉLAI SUPPLÉMENTAIRE POUR SOUMETTRE LES INFORMATIONS ET
DOCUMENTS REQUIS PAR L'ARTICLE 73 TER DU RÈGLEMENT"**

Rule 73 ter of the Rules of Procedure and Evidence

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Defence Counsel for Mathieu Ndirumpatse:
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Defence Counsel for Joseph Nzirorera:
Peter Robinson and Patrick Nimy Mayidika Ngimbi

INTRODUCTION

1. On 4 December 2007, the Prosecution closed its case. During the 5 December 2007 Status Conference, the Chamber and the parties agreed that Accused Édouard Karemera would be the first to start presenting his case on 3 March 2008.¹ Consequently, the Chamber ordered Édouard Karemera to file, no later than 7 January 2008, all the information and documents required under Rule 73 *ter* of the Rules of Procedure and Evidence (the "Rules").²

2. On 8 January 2008, Édouard Karemera filed before the Chamber a motion for extension of time to comply with the Order relating to Rule 73 *ter* of the Rules.³ The Chamber granted the Motion by ordering Édouard Karemera to file, within seven days from the notification of the Decision, the information and documents required under Rule 73 *ter* of the Rules, that is, on 25 January 2008.⁴ By the same Decision, it adjourned commencement of the presentation of evidence to 10 March 2008.⁵

3. On 25 January 2008,⁶ Édouard Karemera filed a motion for further extension of time to comply with the Order relating to Rule 73 *ter* of the Rules.⁷ The Accused gave many reasons for his inability to comply with the Order: his team was allegedly finalizing its list of witnesses; the Defence team had allegedly planned to travel in January and February 2008; the time allotted to the Prosecution to conduct its investigations was allegedly more than that allotted to the Defence; the main witnesses testifying against Édouard Karemera were allegedly called by the Prosecutor during the last two trial sessions; the time allotted to the Defence and the means available to it were allegedly very limited; the workload had allegedly increased lately; the Decision on his Motion filed under Rule 98 *bis* had allegedly not been rendered, thus the Prosecution had allegedly not formally closed its case; a visit by the Defence Counsel to the Detention Facility in Arusha was allegedly essential to consultations with the Accused; and, lastly, the Motion was allegedly in the interests of justice and not dilatory.⁸

¹ T. 5 December 2007, pp. 14-15.

² T. 5 December 2007, p. 19.

³ Édouard Karemera, *Requête en extension de délai de dépôt du mémoire préalable de la Défense et autres documents requis en vertu de l'article 73 ter du RPP* [Édouard Karemera's Motion for extension of time to file the Pre-Defence Brief and other documents required under Rule 73 *ter* of the Rules], filed on 8 January 2008.

⁴ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Décision relative à la requête d'Édouard Karemera en prorogation de délai pour soumettre les informations et documents requis par l'Article 73 ter du Règlement* [Decision on Édouard Karemera's Motion for extension of time to file the Pre-Defence Brief and other documents required under Rule 73 *ter* of the Rules] 18 January 2008 ("Decision, 18 January 2008").

⁵ Decision, 18 January 2008, p. 3.

⁶ The Chamber notes that this motion was faxed on 24 January 2008 and filed with the Court Management Section on 25 January 2008.

⁷ *Requête pour un délai supplémentaire en vue du dépôt du mémoire préalable de la défense et autres documents requis en vertu de l'article 73 ter* [Motion for more time to file the Pre-Defence Brief and other documents required under Rule 73 *ter*] ("Édouard Karemera's Motion"), filed on 23 January 2008.

⁸ Édouard Karemera's Motion, paras. 1-10.

4. In his Response filed on 28 January 2008, the Prosecutor objected to this Motion.⁹ As to the substance of information on the witnesses, the Prosecutor, in recalling the Decision in *Bagosora et al.*,¹⁰ also requested the Chamber to order Édouard Karemera to provide the same information that the Prosecutor had provided pursuant to Rule 73 bis of the Rules, including identifying information on each witness and summaries of anticipated witness testimony, in respect of each and every witness.¹¹

5. The co-Accused have commented neither on this Motion nor on the Prosecutor's Response.

DELIBERATION

6. The Chamber is not persuaded by the arguments advanced by the Accused, as some have been found to be inaccurate. Thus, the case for the Prosecution had closed formally on 5 December 2007,¹² let alone the fact that the Chamber had rendered the Decision on the admission of evidence on 25 January 2008.¹³ The Chamber takes seriously the specific circumstances of the Defence team's investigators, but, as it had already stated in its 18 January 2008 Decision, it reiterates that "it is still persuaded that it is not at this stage that the Defence will start investigations to respond to the Prosecutor's allegations. Therefore, the said circumstances play a minor role"¹⁴.

7. Furthermore, the fact that the decision on the Accused's motions, filed under Rule 98 bis, is yet to be rendered does not appear to the Chamber as sufficient reason to prevent the Defence from filing its Pre-Defence Brief pursuant to Rule 73 ter of the Rules, and the other information required.

8. As to the disparity in the time allotted to the Prosecution and the Defence, the Chamber notes that the principle of equality of arms does not necessarily entail allotting the same amount of time, but that it must be assessed in terms of the circumstances of the case and bearing in mind that the burden of proof is on the Prosecutor. Thus, it is the Chamber's duty to assess the time allotted to the parties according to the principle of proportionality and not of mathematical equality.¹⁵

⁹ Prosecutor's Response to Karemera's "Requête pour un délai supplémentaire en vue du dépôt du mémoire préalable de la Défense et autres documents requis en vertu de l'article 73 ter, filed on 28 January 2008 [Motion for more time to file the Pre-Defence Brief and other documents required under Rule 73 ter] ("Prosecutor's Response").

¹⁰ *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005, para. 8.

¹¹ Prosecutor's Response, paras. 15-17.

¹² *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, T. 5 December 2007.

¹³ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Prosecutor's Motion for Admission of Certain Exhibits into Evidence, 25 January 2008.

¹⁴ Decision, 18 January 2008, para. 4.

¹⁵ *Prosecutor v. Naser Orić*, Case No. IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, Appeals Chamber, 20 July 2005, para. 7; *The Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Case No. ICTR-99-52-A, Judgement, Appeals Chamber, 28 November 2007, para. 220; *Dario Kordić and Mario Čerkez v. Prosecutor*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 176.

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9. The Chamber further recalls that extension of time has already been granted to Édouard Karemera by the 18 January 2008 Decision, and that it led to the postponement of the date for commencement of the case for the Defence. Thus, given the circumstances of the case, the Chamber dismisses the argument that it would be in the interests of justice to grant the Defence additional time.

10. Lastly, as to the Prosecutor's argument that the Chamber did not consider the scope of obligations incumbent upon the Defence under Rule 73 *ter*, the Chamber holds, on the contrary, that it used its discretion under this rule to issue to the Defence instructions that were sufficiently clear and precise as to the information to be provided to the Prosecution.¹⁶

11. However, the Chamber recalls that the principle of disclosing identifying information seeks to enable the party benefiting therefrom to conduct investigations so as to be able to cross-examine the witnesses.¹⁷ In such circumstances, this principle applies to both the Prosecution and the Defence.¹⁸ The Chamber may, however, vary the conditions of time for its application, and especially when protective measures are requested. In the case at bar, the Defence has not requested such measures for its witnesses. However, the Chamber is of the opinion that imposing the same time that had been imposed on the Prosecution would be in the interests of justice, that is, 30 days before commencement of the session.

12. Moreover, the Chamber notes that disclosure of the summary of facts on which each witness will testify is already provided for under Rule 73 *ter* and had also been included in the Chamber's Order of 24 December 2007.¹⁹

¹⁶ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Scheduling Order, 24 December 2007, para. V.

¹⁷ See *The Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, T. 23 February 2005, p. 76 ("The importance of timely disclosure, be it in the form of a summary, a will-say statement, is to give the other party time and opportunity to prepare their case. When it is not made in a timely manner, prejudice may certainly arise or could arise in the preparation of the other party's case.")

¹⁸ See *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005, para. 8.

¹⁹ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Scheduling Order, 24 December 2007, para. V.

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FOR THE ABOVE REASONS, THE CHAMBER

DENIES Édouard Karemera's Motion for another extension of time,

ORDERS Édouard Karemera to file, no later than 31 January 2008, the information and documents required under Rule 73 *ter* of the Rules; and

ORDERS Édouard Karemera to disclose identifying information on his witnesses no later than 30 days before commencement of the next session.

Arusha, 19 January 2008, done in French.

[Signed]

Gberda : Gustave Kam, for
Denis C. M. Byron
Presiding Judge
(Absent during appending of
signatures)

[Signed]

Gberdao Gustave Kam
Judge

[Signed]

Vagn Joensen
Judge

[Seal of the Tribunal]

