



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
02-04-2008
(34495-34493)

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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
Vagn Joensen

Registrar: Adama Dieng

Date: 2 April 2008

JUDICIAL RECORDS/ARCHIVES
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2008 APR - 2 1 P 5: 54

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**

Case No. ICTR-98-44-T

**DECISION ON MATHIEU NGIRUMPATSE'S REQUEST FOR EXTENSION OF
TIME TO FILE RULE 73 *ter* MATERIALS**

*Rules 73 *ter* of the Rules of Procedure and Evidence*

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

Deo Mbutu

INTRODUCTION

1. On 6 March 2008, the Chamber ordered co-accused Mathieu Ndirumpatse and Joseph Nzirorera to file their respective materials under Rule 73 *ter* of the Rules of Procedure and Evidence ("Rules") by 31 March 2008. The Chamber further invited the parties to make submissions on various matters pertaining to the management of the Defence case pursuant to Rule 73 *ter*.¹ In his submissions, Mathieu Ndirumpatse requests, *inter alia*, that the Chamber grants him an extension of time to file his Pre-Trial Brief, list of witnesses, and list of exhibits pursuant to Rule 73 *ter* no less than 30 days prior to the presentation of his case.²

DELIBERATIONS

3. Rule 73 *ter* enables the Chamber to order the Defence, before the commencement of its case but after the close of the case for the prosecution, to file its Pre-Trial Brief, lists of witnesses it intends to call, and exhibits it intends to use at trial ("Rule 73 *ter* submissions").

4. Mathieu Ndirumpatse requests that the Chamber reconsiders its order requiring his Rule 73 *ter* material to be filed by 31 March 2008. He submits that he will only be in a position to file this material when he begins to present his case. He contends that the Prosecution's case has not yet formally closed since certain Prosecution witnesses remain to be heard in April 2008. Therefore, he is still conducting investigations with a view to refining his defence strategy and determining the witnesses he intends to call at trial. He further submits that Edouard Karemera's evidence will impact the preparation of his case, and that he must be able to take it into account in his Rule 73 *ter* submissions. He concludes that the 31 March 2008 deadline imposed by the Chamber for filing his Rule 73 *ter* submissions will prejudice his right to a fair trial, and in this regard recalls that the Prosecution has conducted investigations in this case since 1998.

5. The Chamber notes that Rule 73 *ter* does not envisage holding multiple pre-defence conferences for each accused. Rather, this provision intends to facilitate efficient management of the proceedings by ensuring that key materials are filed prior to the commencement of the Defence's case. The Chamber considers that it is therefore consistent with this provision to require each accused to file his respective Rule 73 *ter* materials prior to the first accused's presentation of his case. The Chamber notes that this approach was taken

¹ *Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, ("Karemera et al."), Reconsidération de la Décision du 27 février 2008 relative à la reprise du procès et au commencement de la présentation des moyens de preuve à décharge (TC), 6 March 2008.

² Observations de Mathieu Ndirumpatse Conformément à la Décision de la Chambre du 6 Mars 2008, filed on 14 March 2008, para. 7.

in other multi-accused cases,³ and accords with the Chamber's discretion under Rule 90 to manage proceedings and exercise control over the order of interrogating witnesses and presentation of evidence.


6. Moreover, the Chamber is mindful that Edouard Karemera, who will be the first accused to present his case, contends that the principles of equality of arms and fair trial dictate that each of the accused file their materials at the same time, so that each co-accused is aware of the defence strategies of their co-accused before commencing his case.⁴ The Chamber considers that this approach also promotes the right of each accused to a fair and expeditious trial, whilst ensuring that they are accorded equal treatment and an opportunity to adequately prepare their defence (by being informed of the defence cases of their co-accused) as required by Articles 19 and 20 of the Statute. The Chamber further observes that each co-accused remains entitled to move the Chamber at a later stage to reinstate the list of witnesses or vary its decision on which witnesses may be called after the commencement of trial pursuant to Rule 73 ter (E), if it is in the interests of justice.

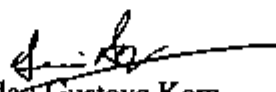
7. Finally, the Chamber reminds Mathieu Ngirumpatse that he must be ready to commence his defence case immediately after Edouard Karemera has completed his defence case.


FOR THESE REASONS, THE CHAMBER

- I. **DENIES** Mathieu Ngirumpatse's request for extension of time;
- II. **ORDERS** Mathieu Ngirumpatse to file his submissions pursuant to Rule 73ter, as previously ordered by the Chamber, no later than 5 April 2008.

Arusha, 2 April 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam


Vagn Joensen
Judge



³ See for example: *Prosecutor v. Augustin Nandiyimana et al.*, Case No. ICTR-2000-56-T, Scheduling Order Following the Pre-Defence Conference Held on 15 February 2007 (TC), 16 February 2007; *Prosecutor v. Ntagerura et al.*, Case No. ICTR-1999-46-T, Pre Defence Scheduling Order (TC), 23 November 2001; *Prosecutor v. Nyiramasuhuko et al.*, T. 18 October 2004 (closed session) pp. 2, 4; *Prosecutor v. Bagasora et al.*, Case No. ICTR-98-41-T, T. 14 October 2004, p. 11.

⁴ "Requete Relative aux Observations sur les Directives Pratiques en vue de la Presentation Des Moyens de Preuve a Decharge", filed on 14 March 2008, paras. 5-15.