



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1002-98-44-T
16-6-2008
(7987bis - 7988bis)
7987bis
Jung

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: 14 May 2008

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THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

DECISION ON MATHIEU NGIRUMPATSE'S REQUEST FOR CERTIFICATION
TO APPEAL THE ORDER OF 17 APRIL 2008 ON THE PRESENTATION OF
THE DEFENCE CASE

Rule 73(B) of the Rules of Procedure and Evidence

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Counsel for Mathieu Ndirumpatse
Chantal Hounkpatin and Frédéric Weyl
Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. By Order of 17 April 2008, amended on 22 April 2008, the Chamber scheduled the hearings of witnesses for Édouard Karemera and Mathieu Ndirumpatse from 17 April to 30 May 2008 and from 16 June to 18 July 2008.¹
2. On 24 April 2008, the Defence for Mathieu Ndirumpatse filed a request for certification to appeal the Order of 17 April 2008 as amended, alleging that the schedule imposed on it, namely to be prepared to call its witnesses during one of the sessions listed in the Order, affects the fair and expeditious conduct of the proceedings.
3. None of the parties in the instant case responded to the request. It should however be noted that the Prosecutor has also filed a request for certification to appeal the Order of 17 April 2008. The Chamber will rule on that other request in a separate decision, insofar as the issue raised by the Prosecutor is not linked to the schedule for the presentation of the Defence case, but to the scope of the cross-examination by the Prosecutor.

DELIBERATIONS

4. Rule 73(B) of the Rules provides that certification to appeal may only be granted if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The Appeals Chamber recognizes the discretionary powers of the Trial Chamber over Rule 73(B) procedures and regularly emphasizes that requests for certification to appeal are only warranted under exceptional circumstances.²
5. With regard to fairness, the Defence contends that the Order fails to take into consideration the fundamental rule of equality of arms, and that it seeks to reduce the time allotted for the Defence case, confining it to limits which had not been imposed on the Prosecution. According to the Defence, the Chamber is thus interfering with the choices made by the Defence in the interest of its client. Furthermore, considering that the Order directly affects the Defence strategy and puts it at a disadvantage vis-à-vis the Prosecution, the Defence submits that were the Appeals Chamber to resolve this matter properly, it would materially advance the proceedings.
6. In the opinion of the Chamber, the Order merely determines the judicial calendar to ensure the proper conduct of proceedings. Under Rule 90 of the Rules, the conduct of proceedings falls within the discretion of the Chamber. The exercise of discretion equally applies to the amendment of any justified measure taken by the Chamber whenever the circumstances and the interests of justice require. In other words, the calendar remains subject to any appropriate amendment subject to the Chamber's control. Moreover, the

¹ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera, Case No. ICTR-98-44-T, Ordonnance relative à la présentation des moyens de preuve à décharge (FC)*, 17 April 2008.

² *The Prosecutor v. Théoneste Bagosora et al., Decision on Kabiligi Application for Certification Concerning Defence Cross-Examination after Prosecution Cross-Examination (FC1)*, 2 December 2005, para. 5.

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Chamber has already had to effect a material amendment by directing that Mathieu Ndirumpatse only call his witnesses in the month of September 2008. In the circumstances, the Chamber finds that an immediate resolution by the Appeals Chamber would not materially advance the proceedings, as it is not necessary. Consequently, this request cannot be granted.

FOR THESE REASONS, THE CHAMBER

DISMISSES Mathieu Ndirumpatse's request for certification to appeal the Order of 17 April 2008 on the presentation of the Defence case.

Done at Arusha on 15 May 2008, in French

[Signed]

Dennis C. M. Byron
Presiding

[Signed]

Gberdao Gustave Kam
Juge

[Signed]

Vagn Joensen
Juge

[Seal of the Tribunal]

