

ICTR-98-44-T
5-9-2008
(37330-37327)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 18 June 2008

THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL SECRETARIAT
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**DECISION ON "REQUÊTE D'ÉDOUARD KAREMERA AFIN DE NE PAS COMMUNIQUER
LES ÉLÉMENTS D'IDENTIFICATION DE SES TÉMOINS PROTÉGÉS DANS
L'IMMÉDIAT" AND "REQUÊTE DU PROCUREUR EN COMMUNICATION DE
L'ORDRE DE COMPARUTION DES TÉMOINS D'ÉDOUARD KAREMERA"**

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

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CI1108-0104 (E)

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Translation certified by LSS, ICTR

INTRODUCTION

1. On 21 April 2008, Édouard Karemera filed an *ex parte* motion, seeking variation of his list of witnesses and addition of witnesses developed as part of recent investigations.¹ An amended list of witnesses containing witnesses' particulars: pseudonyms, exact identities, contacts and a summary of will-say statements was annexed to the motion.
2. In its Decision of 2 June 2008,² the Chamber granted Édouard Karemera's request to vary his list of witnesses. It also directed the Registry to make the request public, with the exception of the annex containing witnesses' particulars, which was to be disclosed to the parties only.
3. On 4 June 2008, Édouard Karemera filed an urgent motion requesting that the particulars of protected witnesses be redacted from the annex in question prior to any disclosure to the parties.³ On the same day, noting that if it granted the motion, execution of its earlier Decision of 2 June 2008 would be prejudicial to Édouard Karemera, the Chamber ordered a stay of execution of the Decision,⁴ without prejudice.
4. The Prosecutor objects to the motion⁵ and requested the Chamber to explain the rationale for granting Édouard Karemera leave to file an *ex parte* motion to vary his list of witnesses whereas Édouard Karemera had already opened his case and had been directed by various previous orders to disclose the relevant information.
5. Lastly, on 13 June 2008, the Prosecutor filed an urgent motion to obtain information about the order of appearance of Édouard Karemera's witnesses and the list of witnesses who would testify in the session starting on 30 June 2008.⁶ The Prosecutor alleged prejudice as arising from his being unable to plan and carry out investigations due to late disclosures, suggesting that he might have to request extension of time in order to complete his investigations so as to be able to cross-examine relevant witnesses. He therefore prayed the Chamber to order Édouard Karemera to disclose the complete list of his witnesses and an order of appearance of the five witnesses whose particulars had been previously disclosed.

¹ *Urgente soumission ex-parte et confidentielle d'Édouard Karemera en vue de varier la liste de ses témoins potentiels préalablement à la présentation de sa défense*, 21 April 2008.

² *Décision relative aux requêtes d'Édouard Karemera en modification de la liste de ses témoins ainsi qu'en extension des mesures de protection*, 2 June 2008.

³ *Urgente requête d'Édouard Karemera afin que la communication de l'Annexe accompagnant sa requête pour la modification de la liste de ses témoins-soumise ex parte et rendue confidentielle sur ordonnance de la décision du 2 juin 2008 soit effectuée sous caviardage*, 4 June 2008.

⁴ *Décision relative aux requêtes d'Édouard Karemera, relatives à la modification de la liste de ses témoins ainsi qu'en extension des mesures de protection*, 2 June 2008.

⁵ Prosecutor's Response to « *Urgente requête d'Édouard Karemera afin que la communication de l'Annexe accompagnant sa requête pour la modification de la liste de ses témoins soumise ex parte et rendue confidentielle sur Ordonnance de la Décision du 2 juin 2008 soit effectuée sous caviardage* » and Cross-Motion for Remedial and Punitive Measures, 9 June 2008.

⁶ Prosecution's Urgent Motion to Obtain Information Concerning the Order of Appearance of Karemera's Defense Witnesses, filed with the Registry on 13 June 2008.

DELIBERATIONS**The preliminary issue of the *ex parte* character of the Defence submissions**

6. The Prosecutor requests the Chamber to state the legal basis for granting Édouard Karemera leave to file an *ex parte* motion to vary his list of witnesses, which motion contains details which other decisions of the Chamber had ordered to be disclosed.

7. The Chamber states that its previous decision is self-explanatory.

Édouard Karemera's request for reconsideration

8. Édouard Karemera requests that the particulars of protected witnesses contained in the annex be redacted prior to disclosure to the parties, arguing that such a request was consistent with the Decision of 19 February 2008 that ordered protective measures. Moreover, he reiterates that he provided such a comprehensive list only because it was an *ex parte* motion filed in accordance with the Chamber's order. He submits that under consistent Tribunal's case law, such information is to be disclosed only within 21 days, but it is unclear whether such time limit runs as from the commencement of the trial, of the session or of the hearing of the witness.

9. The Chamber recalls that in its Decision of 19 February 2008, it ordered the Defence to disclose all particulars of its witnesses within 30 days of the commencement of the Defence case and that Édouard Karemera's Defence motion for reconsideration of that decision was denied on 17 April 2008. As Édouard Karemera opened his case on 21 April 2008, the time limit in question has expired. The Decision of 2 June 2008 operated only to extend such protective measures as were granted on 19 February 2008 to include the new witnesses on the amended list. Such an amendment cannot be a new circumstance giving rise to a motion for reconsideration.

10. The Chamber notes that despite a series of consistent orders directing the Defence for Édouard Karemera to disclose certain information to the parties pursuant to Rule 73 *ter* (B), including its witnesses' identities,⁷ the Defence for Édouard Karemera is yet to comply with such orders and is therefore in violation of the Chamber's previous orders and decisions. Moreover, the stay of execution of the Decision of 2 June 2008 only applied to the direction

⁷ *The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Édouard Karemera's Motion for orders for the Protection of Defence Witnesses (TC3), 19 February 2008; Decision on Édouard Karemera's Motion for Postponement of the Commencement of his Case as well as on the Prosecutor's Cross-Motion for Enforcement of Rule 73 *ter* and Remedial and Punitive Measures and the Prosecutor's Request for Temporary Transfer of Witness AXA Pursuant to Rule 90 *bis*, (TC3), 27 February 2008; Reconsideration of the Decision of 27 February 2008 on the Resumption of Trial and Commencement of the Defence Case (TC3), 6 March 2008; Decision on Mathieu Ndirumpatse's Request for Extension of Time to File Rule 73 *ter* Materials (TC3), 2 April 2008; Decision on Prosecutor's Submissions Concerning Édouard Karemera's Compliance with Rule 73 *ter* and Chamber's Orders (TC3), 2 April 2008; *Décision relative à la présentation des moyens de preuve à décharge*, 17 April 2008; and *Décision relative aux requêtes d'Édouard Karemera en modification de la liste de ses témoins ainsi qu'en extension des mesures de protection*, 2 June 2008.

Decision on "Requête d'Édouard Karemera afin de ne pas communiquer les éléments d'identification de ses témoins protégés dans l'immédiat"

18 June 2008

issued to the Registry to reclassify the annex in question as confidential and did not relieve Édouard Karemera of his duty to disclose all required information to the parties, including the particulars of his witnesses.

11. The Chamber thus notes that the Defence for Édouard Karemera has consistently violated its previous decisions and orders and orders it to comply with them forthwith.

12. Lastly, the Chamber further notes that the Prosecutor, alleging prejudice as a result of this continuous violation, requests that Defence be sanctioned. The Chamber finds that, at this juncture, it is not necessary to sanction Édouard Karemera; rather, it intends to take appropriate measures on case by case basis.

FOR THESE REASONS, THE CHAMBER

I. DISMISSES Édouard Karemera's Motion and **DIRECTS** the Registry to comply with the Decision of 2 June 2008 to classify as confidential the Annex to the "*Urgente soumission ex-parte et confidentielle d'Édouard Karemera en vue de varier la liste de ses témoins potentiels préalablement à la présentation de sa défense*", filed on 21 April 2008; and

II. PARTIALLY GRANTS the Prosecutor's Motion and **ORDERS** Édouard Karemera to disclose immediately and, in any event, no later than 19 June 2008, the order of appearance of all his witnesses.

Arusha, 18 June 2008 (Original: French)

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Gberdao Gustave Kam
Judge

[Signed]

Vagn Joensen
Judge

[Seal of the Tribunal]

