

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:

Decision of:

3 October 2008

Mr. Adama Dieng

THE PROSECUTOR

v.

ÉDOUARD KAREMERA MATHIEU NGIRUMPATSE JOSEPH NZIRORERA

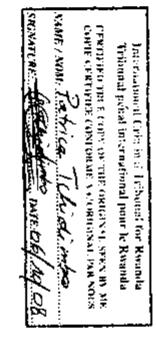
Case No. ICTR-98-44-R75

ELIÉZER NIYITEGEKA

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THE PROSECUTOR

Case No. ICTR-96-14-R75



ICTR-98-44-R75 06 October 2008

(2166/H - 2163/H)

P. T.

Decision on Édouard Karemera's Motion for Extension of Time to Respond to Elieze Niyltegeka's Appeal of 2 July 2008

Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Joseph Nzirorera. Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mathieu Ngirumpatse

Eliézer Nivitegeka

pro se

Office of the Prosecutor

Mr. Alex Obote-Odora Mr. George W. Mugwanya Ms. Inneke Onsea

ICTR Appeals Chamber Date: 6 October 2008 Action: PT-Copied To: Concon c fi ୶ 🛛 ychivel

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1. 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), is seized of the "Motion to Extend the Time-Limit for Filing Édouard Karemera's Response to the Appeal Lodged by Niyitegeka Following Trial Chamber III's Denial of Access to Confidential Materials" filed on 8 August 2008 ("Motion") by Édouard Karemera ("Karemera").

A. <u>Background</u>

2. On 14 February 2008, a bench of Trial Chamber III designated by the President of the Tribunal¹ denied a motion filed by Eliézer Niyitegeka for access to closed session transcripts from the *Muhimana* case² ("14 February 2008 Decision").³ On 25 February 2008, a bench of Trial Chamber III seized of the *Karemera et al.* case denied Niyitegeka access to closed session transcripts from transcripts from the *Karemera et al.* case ("25 February 2008 Decision").⁴

3. On 17 April 2008, Niyitegeka filed a motion for clarification before the Appeals Chamber related to, *inter alia*, the 14 February 2008 Decision and the 25 February 2008 Decision.³ In a decision dated 20 June 2008, the Appeals Chamber found *proprio motu* that Niyitegeka was entitled to challenge, on appeal, the Trial Chamber's decisions denying him access to confidential transcripts from other cases.⁶

4. On 2 July 2008, Niyitegeka filed, in his case, the "Appel groupé contre les Décisions de la Chambre de première instance III du 14 février 2008 et du 25 février 2008 respectivement, sur les

¹ The Prosecutor v. Eliézer Niyllegeka, Case No. ICTR-96-14-R75, Designation of a Trial Chamber to Consider the Request for Disclosure of Closed Session Transcripts, 15 November 2007. ² The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, Requête urgente de Mr. Eliézer Niyltegeka (ICTR-96-

² The Prosecutor v. Mikaeli Muhimana, Case No. ICTR-95-1B-T, Requête urgente de Mr. Eliézer Niyitegeka (ICTR-96-14-R) aux fins de communication du procès-verbal de l'audience à huis-clos et d'une pièce déposée sous scellée (sic) lors de la déposition du témoin DD, confidential, filed 18 July 2007.

³ The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-R75, Decision on Motion from Eliézer Niyitegeka for Disclosure of Closed Session Testimony and Evidence under Seal, 14 Pobruary 2008. See also The Prosecutor v. Eliézer Niyitegeka, Case No. ICTR-96-14-R75, Decision on Motion for Reconsideration of Decision on Motion from Eliézer Niyitegeka for Disclosure of Closed Session Testimony and Evidence under Seal, or Alternatively for Certification to Appeal, 13 May 2008.

⁴ The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-T, Décision sur la Requête urgente d'Eliézer Nivitegeka aux fins de communication des procès-verbaux des audiences à huis-clos de la déposition du témoin AMM, 25 February 2008, ruling on The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-T, Requête urgente de Mr. Eliézer Nivitegeka aux fins de communication des procès-verbaux des audiences à huis-clos de la déposition du témoin AMM, 4 February 2008. See also The Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-T. Décision relative à la Requête d'Eliézer Nivitegeka en réexamen de la Décision du 25 février 2008, 1 April 2008.

⁵ Requête aux fins d'une Clarification sur l'interprétation de "Nivitegeka's Decision on 3rd Request for Review", 17 April 2008. ⁶ Eliézer Nivitegeka v. The Prosecutor, Case No. ICTR-96-14-R75, Decision on Motion for Clarification, 20 June 2008.

^b Eliézer Niyilegeka v. The Prosecutor, Case No. ICTR-96-14-R75, Decision on Motion for Clarification, 20 June 2008, para. 16.

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requêtes d'Eliézer Niyitegeka aux fins de communication des procès-verbaux des audiences à huis clos des témoins DD dans Muhimana et AMM dans Karemera et al." ("Consolidated Appeal"), challenging both the 14 February 2008 Decision and the 25 February 2008 Decision. The Prosecution responded to the Consolidated Appeal on 11 July 2008.⁷ Nivitegeka filed an Addendum to the Consolidated Appeal on 14 July 2008, requesting the assignment of counsel to assist him with the Consolidated Appeal.⁸ On 21 July 2008, Nivitegeka filed a Reply to the Prosecution's Response to the Consolidated Appeal.⁹ On 24 July 2008, the Prosecution filed its response to the Addendum to the Consolidated Appeal.¹⁰

On 25 July 2008, the Appeals Chamber granted, in part, a motion from Joseph Nzirorera¹¹ 5. and directed the Registrar to cross-file the Consolidated Appeal in the Karemera et al. case.¹² This decision also ordered Karemera, Mathieu Ngirumpatse and Joseph Nzirorera to file their respective responses to the Consolidated Appeal, if any, within ten days of the Consolidated Appeal being cross-filed in their case and upon receipt of certain stipulated documents.¹³ Karemera has now requested an extension of this time limit to file his response, as well as an order directing the Registry to expedite the French translation of Nzirorera's Motion and the Decision on Nzirorera's Motion.14

B. Discussion

Karemera asserts that he is unable to file a response to the Consolidated Appeal because the б. Decision on Nzirorera's Motion and Nzirorera's Motion are only available in English.¹⁵ He claims that Rule 3 of the Rules of Procedure and Evidence of the Tribunal ("Rules") confers on the Registrar the responsibility of arranging the translation of documents into the two working

⁷ Prosecutor's Response to Nivitegeka's "Appel groupé contre les Décisions de la Chambre de première instance III du 14 février 2008 et du 25 février 2008, respectivement, sur les requêtes d'Eliziér (sic) Nivitegeka aux fins de communication des proces-verbaux des audiences à huis clos des témoins DD dans Muhimana et AMM dans Karemera et al.", 11 July 2008 ("Prosecution's Response to the Consolidated Append").

Addendum à l'« Appel groupé contre les Décisions de la Chambre de première instance III du 14 février 2008 et du 25 février 2008 respectivement, sur les requêtes d'Ellézer Nivitegeha aux fins de communication des proces-verbaux des audiences à huis clos des témoins DD dans Muhimana et AMM dans Karomera et al. », 14 July 2008 ("Addendum to the Consolidated Appeal").

Réplique à la "Prosecutor's Response to Nivitegeka's 'Appel groupé contre les Décisions de la Chambre de première instance III du 14 février 2008 et du 25 février 2008, respectivement, sur les requêtes d'Eliziér (sic) Nivitegeka aux fins de communication des procès-verbaux des audiences à huis clos des témoins DD dans Muhimana et AMM dans Karemera et al.", 21 July 2008 ("Nivitogeka's Reply to the Prosecution's Response to the Consolidated Appeal"). ¹⁰ Prosecutor's Response to Nivitogeka's Addendum, 24 July 2008 ("Prosecution's Response to the Addendum to the

Consolidated Appeal"). ¹¹ Joseph Nzirorera's Motion for Re-Classification of Appeal and Suggestion for Appointment of Counsel, 11 July 2008

^{(&}quot;Nzirorera's Motion"). ¹² Decision on Joseph Nzirorera's Motion for Re-Classification and Suggestion for Appointment of Counsel, 25 July 2008 ("Decision on Nzirorera's Motion"), para. 13.

¹³ Decision on Nzirorera's Motion, para. 13.

¹⁴ Motion, paras. 3-14.

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languages of the Tribunal,¹⁶ and that pursuant to Article 20(4) of the Tribunal's Statute, materials should be provided in the working language of both the accused and his counsel.¹⁷ Karemera argues that given the factual nexus between the Niyitegeka case and his case, the interests of justice require that he be fully apprised of all the details of the matter at hand.¹⁸

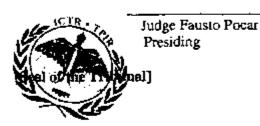
A request to extend a time limit may be granted upon the showing of good cause.¹⁹ The 7. Appeals Chamber recalls in this respect that "[p]rocedural time-limits are to be respected, they are indispensable to the proper functioning of the Tribunal and the fulfillment of its mission to do justice. Violations of these time-limits, unaccompanied by any showing of good cause, will not be tolerated".20

Where the ability of an accused to make full answer and defence depends on the availability 8 of a decision in an official language other than that in which it was originally issued, this circumstance shall be taken into account as good cause.²¹ While Nzirorera's Motion and the Decision on Nzirorera's Motion may not be available in French, this in itself does not constitute good cause. Karemera fails to show how these documents affect his ability to respond to the Consolidated Appeal, which is available in French. Consequently, Karemera has not demonstrated the existence of good cause that would warrant an extension of time for the filing of his response to the Consolidated Appeal.

C. Disposition

For the foregoing reasons, the Appeals Chamber DENIES the Motion in its entirety. 9.

Done this 3rd day of October 2008. at The Hague, The Netherlands.



" Rule 116 (A) of the Rules.

¹³ Motion, paras. 3-6.

¹⁶ Motion, pera. 7.

¹⁷ Motion, para. 8.

Motion, para. 12.

²⁰ The Prosecutor v. Clement Kuyishema and Obed Ruzindana, Case No. ICTR-95-1-A, Judgement (Reasons), para, 46 (footnotes omitted). See also Prosecutor v. Baton Haxhiu, Case No. IT-04-84-R77.5-A, Decision on Admissibility of Notice of Appeal Against Trial Judgement, 4 September 2008, pars. 16. ²⁴ Rule 116 (B) of the Rules.