



2166/H

Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

IN THE APPEALS CHAMBER

ICTR-98-44-R75  
06 October 2008  
(2166/H - 2163/H)

Before: Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Wolfgang Schomburg

P.T.

Registrar: Mr. Adama Dieng

Decision of: 3 October 2008

THE PROSECUTOR

v.

ÉDOUARD KAREMERA  
MATHIEU NGIRUMPATSE  
JOSEPH NZIRORERA

Case No. ICTR-98-44-R75

ELIÉZER NIYTEGEKA

v.

THE PROSECUTOR

Case No. ICTR-96-14-R75

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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ICTR Appeals Chamber

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*Patricia Tshidimpo*

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

Counsel for Édouard Karemera  
Ms. Dior Diagne Mbaye  
Mr. Félix Sow

Counsel for Édouard Karemera's Co-Accused  
Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Joseph Nzirorera  
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mathieu Ngirumpatse

Eliézer Niyitegeka  
pro se

Office of the Prosecutor  
Mr. Alex Obote-Odora  
Mr. George W. Mugwanya  
Ms. Inneke Onsea

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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. Background

2. On 14 February 2008, a bench of Trial Chamber III designated by the President of the Tribunal<sup>1</sup> denied a motion filed by Eliézer Niyitegeka for access to closed session transcripts from the *Muhimana* case<sup>2</sup> ("14 February 2008 Decision").<sup>3</sup> 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 the *Karemera et al.* case ("25 February 2008 Decision").<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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*

<sup>1</sup> *The Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-R75, Designation of a Trial Chamber to Consider the Request for Disclosure of Closed Session Transcripts, 15 November 2007.

<sup>2</sup> *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.

<sup>3</sup> *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 February 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.

<sup>4</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Décision sur la Requête urgente d'Eliézer Niyitegeka 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 Niyitegeka 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 Niyitegeka en réexamen de la Décision du 25 février 2008*, 1 April 2008.

<sup>5</sup> *Requête aux fins d'une Clarification sur l'interprétation de "Niyitegeka's Decision on 3<sup>rd</sup> Request for Review"*, 17 April 2008.

<sup>6</sup> *Eliézer Niyitegeka v. The Prosecutor*, Case No. ICTR-96-14-R75, Decision on Motion for Clarification, 20 June 2008, para. 16.

*requêtes d'Elizier 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.<sup>7</sup> Niyitegeka filed an Addendum to the Consolidated Appeal on 14 July 2008, requesting the assignment of counsel to assist him with the Consolidated Appeal.<sup>8</sup> On 21 July 2008, Niyitegeka filed a Reply to the Prosecution's Response to the Consolidated Appeal.<sup>9</sup> On 24 July 2008, the Prosecution filed its response to the Addendum to the Consolidated Appeal.<sup>10</sup>

5. On 25 July 2008, the Appeals Chamber granted, in part, a motion from Joseph Nzirorera<sup>11</sup> and directed the Registrar to cross-file the Consolidated Appeal in the *Karemera et al.* case.<sup>12</sup> This decision also ordered Karemera, Mathieu Ndirumpatse 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.<sup>13</sup> 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.<sup>14</sup>

## B. Discussion

6. Karemera asserts that he is unable to file a response to the Consolidated Appeal because the Decision on Nzirorera's Motion and Nzirorera's Motion are only available in English.<sup>15</sup> 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

<sup>7</sup> Prosecutor's Response to Niyitegeka'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'Elizier [sic] Niyitegeka aux fins de communication des procès-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 Appeal").

<sup>8</sup> 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'Elizier Niyitegeka aux fins de communication des procès-verbaux des audiences à huis clos des témoins DD dans Muhimana et AMM dans Karemera et al., 14 July 2008 ("Addendum to the Consolidated Appeal").

<sup>9</sup> Réplique à la "Prosecutor's Response to Niyitegeka'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'Elizier [sic] Niyitegeka 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 ("Niyitegeka's Reply to the Prosecution's Response to the Consolidated Appeal").

<sup>10</sup> Prosecutor's Response to Niyitegeka's Addendum, 24 July 2008 ("Prosecution's Response to the Addendum to the Consolidated Appeal").

<sup>11</sup> Joseph Nzirorera's Motion for Re-Classification of Appeal and Suggestion for Appointment of Counsel, 11 July 2008 ("Nzirorera's Motion").

<sup>12</sup> 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.

<sup>13</sup> Decision on Nzirorera's Motion, para. 13.

<sup>14</sup> Motions, paras. 3-14.

languages of the Tribunal,<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

7. A request to extend a time limit may be granted upon the showing of good cause.<sup>19</sup> The 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 fulfilment of its mission to do justice. Violations of these time-limits, unaccompanied by any showing of good cause, will not be tolerated".<sup>20</sup>

8. Where the ability of an accused to make full answer and defence depends on the availability 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.<sup>21</sup> 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

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

Done this 3<sup>rd</sup> day of October 2008,  
at The Hague, The Netherlands.



Judge Fausto Pocar  
Presiding



<sup>15</sup> Motion, paras. 3-6.

<sup>16</sup> Motion, para. 7.

<sup>17</sup> Motion, para. 8.

<sup>18</sup> Motion, para. 12.

<sup>19</sup> Rule 116 (A) of the Rules.

<sup>20</sup> *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-A, Judgment (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 Judgment, 4 September 2008, para. 16.

<sup>21</sup> Rule 116 (B) of the Rules.