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ICTR-98-44-AR73.16



UNITED NATIONS
NATIONS UNIES

Tribunal pénal international pour le Rwanda
International Criminal Tribunal for Rwanda 24 March 2009
{2635/H – 2631/H}

IN THE APPEALS CHAMBER

Before:

Judge Liu Daqun, Presiding
Judge Mohamed Shahabuddeen
Judge Fausto Pocar
Judge Theodor Meron
Judge Iain Bonomy

ICTR Appeals Chamber
Date: 24 March 2009
Action: R. Juma
Copied To: Concerned Judges,
Judicial Archives, Parties,
LDs, LSS

Registrar:

Mr. Adama Dieng

Decision of:

24 March 2009

ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE
JOSEPH NZIRORERA

v.

THE PROSECUTOR

Case No. ICTR-98-44-AR73.16

DECISION ON REQUESTS FOR EXTENSION OF TIME

JUDICIAL RECORDS ARCHIVES
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Counsel for the Defence:

Ms. Dior Diagne Mbaye and Mr. Félix Sow for Édouard Karemera
Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Matthieu Ngirumpatse
Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Joseph Nzirorera

The Office of the Prosecutor:

Mr. Hassan Bubacar Jallow
Mr. Don Webster
Mr. Iain Morley
Mr. Saidou N'Dow
Ms. Gerda Visser
Ms. Sunkarie Ballah-Conteh
Mr. Takeh Sendze

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
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NAME / NOM: *KOFEI...KUMELIA...A...AFANDE*
SIGNATURE: *[Signature]* DATE: *24 March 2009*

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 three motions for extension of time, filed by Joseph Nzirorera on 6 March 2009 and by Édouard Karemera and Matthieu Ngirumpatse on 9 March 2009 ("Applicants").¹ The Prosecution responded on 9 March 2009.²

INTRODUCTION

2. On 3 March 2009, Trial Chamber III denied a motion to stay proceedings, severed Mr. Ngirumpatse from the *Karemera et al.* case, and ordered the trial of Mr. Karemera and Mr. Nzirorera to continue on 23 March 2009 ("Impugned Decision").³ In the same decision, the Trial Chamber granted the parties certification to appeal.⁴ The Impugned Decision was issued in English.

3. Mr. Karemera, Mr. Ngirumpatse, and Mr. Nzirorera seek an extension of time to file their interlocutory appeals pending the translation of the Impugned Decision into French.⁵ The three Applicants speak French and counsel for Mr. Karemera and Mr. Ngirumpatse work in French, and not in English.⁶ Counsel for Mr. Nzirorera works in English but requests an extension of time in view of the need to coordinate his appeal with the other Applicants after they have become familiar with the substance of the Impugned Decision.⁷ The Prosecution agrees that an extension of time should be granted.⁸

¹ Motion for Extension of Time, 6 March 2009 ("*Nzirorera Motion*"); *Requête de Édouard Karemera aux fins de extension de délai*, 9 March 2009 ("*Karemera Motion*"); *Requête de M Ngirumpatse en extension du délai de dépôt de son appel la décision de la chambre de première instance du 3 mars 2009 ordonnant disjonction*, 9 March 2009 ("*Ngirumpatse Motion*").

² Prosecutor's Response to Nzirorera's and Karemera's Motions for Extension of Time to File Interlocutory Appeal Briefs, 9 March 2009 ("Prosecution Response"). The Response was filed shortly before Mr. Ngirumpatse filed his motion. The Response anticipates that Mr. Ngirumpatse would file a request for extension of time. See Response, para. 3. The Prosecution has not filed a separate response to the *Ngirumpatse Motion*.

³ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Continuation of Trial, 3 March 2009, p. 16 ("Impugned Decision").

⁴ Impugned Decision, para. 61. On 12 March 2009, the Trial Chamber clarified that its decision granted certification to all parties. See also *The Prosecutor v. Édouard Karemera et al.*, Case Nos. ICTR-98-44-T and ICTR-98-44E-T, Decision on Urgent Request for Precision or Alternatively Correction of the Decision of 3 March 2009 on Continuation of Trial, 12 March 2009, para. 3.

⁵ *Karemera Motion*, p. 1; *Ngirumpatse Motion*, p. 5; *Nzirorera Motion*, para. 9.

⁶ *Karemera Motion*, p. 1; *Ngirumpatse Motion*, para. 22(a); *Nzirorera Motion*, para. 4.

DISCUSSION

4. Rule 116(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules") allows the Appeals Chamber to extend a time limit upon a showing of good cause. In accordance with Rule 116(B), the requirement for good cause is satisfied "[w]here the ability of the 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". Considering that the language in which Mr. Karemera and Mr. Ndirumpatse would be able to understand the Impugned Decision is French, and the fact that counsel for these Applicants work only in French, the Appeals Chamber finds that good cause exists to allow an extension of time for them to file their appeals after the French version of the Impugned Decision becomes available.⁹ It is also in the interests of justice to extend the time for the filing of these Applicants' replies, if the Prosecution response is filed in English, until after its translation into French.

5. Mr. Nzirorera also speaks French. However, he has not suggested in his motion that his ability to prepare his own appeal depends on receipt of the French version of the decision. To the contrary, he submits that he normally does not require translation into French in order to prepare his interlocutory appeals, as his counsel speaks English.¹⁰ Rather, his principal concern is his need to coordinate his appeal with his co-accused who require translation.¹¹ The need for coordination alone does not demonstrate good cause for an extension of time under Rule 116(A) of the Rules, in particular since the Applicants do not indicate that they intend to file a joint appeal.

6. However, in this instance, in view of the nature of the decision, which severed Mr. Ndirumpatse from the joint trial and ordered the continuation of Mr. Karemera's and Mr. Nzirorera's case, the Appeals Chamber sees merit in allowing consultation prior to the filing of each of the appeals. Furthermore, the Prosecution, recognizing the importance and complexity of the issues decided in the Impugned Decision, supports granting an extension of time to Mr. Nzirorera.¹² The Appeals Chamber observes that allowing Mr. Nzirorera an extension of time would not delay the overall consideration of the appeal since the submissions of the three Applicants will be considered together. It also notes that a translation of the Impugned Decision is expected on 25 March 2009. Accordingly, in the particular circumstances of this case, the Appeals

⁷ *Nzirorera Motion*, paras. 5-7.

⁸ *Prosecution Response*, para. 6.

⁹ The Appeals Chamber has previously granted extensions of time on this basis in this case. *See, e.g.*, *Decision on Request for Extension of Time*, 27 January 2006, paras. 4, 8; *Decision on Request for Extension of Time*, 24 March 2006, paras. 2, 3; *Decision on Édouard Karemera's Request for Extension of Time to Respond to the Prosecution's Interlocutory Appeal*, 4 April 2006, para. 3; *Decision on Request for Extension of Time*, 9 June 2006, paras. 3, 4.

¹⁰ *Nzirorera Motion*, para. 5.

¹¹ *Nzirorera Motion*, paras. 5, 6.

Chamber considers that it is in the interests of justice to also accord Mr. Nzirorera an extension of time.¹³

7. With respect to the length of the delay, the extension from the filing of a translation normally mirrors the original time-frame envisioned under the Rules or Practice Direction, which in the case of an interlocutory appeal is seven days from the certification decision for the appeal, 10 days for the response, and four days for the reply.¹⁴ Mr. Ngirumpatse, however, seeks an extension of 15 days to file his appeal.¹⁵ According to him, the additional time is warranted because he is currently hospitalized in Nairobi and his counsel are in Europe.¹⁶ After his severance from the case, his counsel no longer have a work plan which would allow them to travel to Arusha, and he has limited ability to confer confidentially with them by telephone from the hospital.¹⁷ He also points to the significance and complexity of the matter as further justification for the requested extension.¹⁸

8. The Appeals Chamber is not satisfied that these reasons justify an additional eight day extension of time beyond the normal seven day period for filing an interlocutory appeal. Mr. Ngirumpatse has not explained how the additional time would remedy the problems of communication that he has highlighted in his submissions. Additionally, the complexity or importance of the appeal does not alone justify an extension of time as all interlocutory appeals by their very nature are matters which might significantly affect the outcome of a trial. Consequently, Mr. Ngirumpatse has not shown good cause for a 15 day extension of time.

DISPOSITION

9. For the foregoing reasons, the Appeals Chamber

GRANTS a seven day extension of time to the Applicants to file their appeals from the filing of the French version of the Impugned Decision;

¹² Prosecution Response, paras. 4-6.

¹³ The Appeals Chamber has previously granted extensions of time based on logistical considerations in circumstances where it is important to hear a party on an issue, the opposing party does not object, and the delay is limited and will not impact the overall consideration of the appeal. See *André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44C-A, Decision on Request for Extension of Time to File a Response, 7 May 2007, paras. 4, 5; *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-AR73, Decision on Request for Extension of Time to File Reply, 3 July 2006, paras. 2, 3.

¹⁴ Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal, 8 December 2006, paras. 9-11 ("Practice Direction"). More limited extensions have been accorded where counsel works in the language in which the decision was issued. See, e.g., *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Protais Zigiranyirazo's Motion for an Extension of Time for the Filing of the Respondent's Brief, 3 July 2006, paras. 5, 6.

¹⁵ *Ngirumpatse* Motion, para. 24. Mr. Nzirorera requests a seven day extension of time. See *Nzirorera* Motion, para. 9. Mr. Karemera did not specify a time frame. See *Karemera* Motion, p. 1.

¹⁶ *Ngirumpatse* Motion, para. 17.

¹⁷ *Ngirumpatse* Motion, paras. 17, 22(b).

¹⁸ *Ngirumpatse* Motion, para. 22 (d, e).

ALLOWS the Prosecution to file a consolidated response within 10 days of the filing of the appeals;

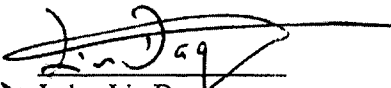
ALLOWS the Applicants to file their replies, if any, within four days of the filing of the French version of the Prosecution's response, if it is filed in English;

DIRECTS the Registry to provide to the Applicants and their counsel, on an urgent basis, French translations of the Impugned Decision and the Prosecution's response;

FURTHER DIRECTS the Registry to facilitate communication between Mr. Ngirumpatse and his counsel in connection with the preparation of his appeal.

Done in English and French, the English version being authoritative.

Done this 24th day of March 2009,
At The Hague,
The Netherlands.


Judge Liu Daqin
Presiding

[Seal of the Tribunal]