

ICTR-98-44-T
12-06-2009
(46165-46162)

46165
A



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 11 June 2009

JUDICIAL RECORDS/ARCHIVE
RECEIVED

2009 JUN 12 P 12:16
[Signature]

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA
Case No. ICTR-98-44-T

DECISION RECONSIDERING ORAL ORDER OF 28 MAY 2009

Rule 54 of the Rules of Evidence and Procedure

Office of the Prosecution:
Don Webster
Saidou N'Dow
Arif Virani
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

[Signature]

46164

INTRODUCTION

1. On 28 May 2009, the Chamber directed the Prosecution to file written submissions in English and in French regarding the admission of documents used during the cross-examination of Édouard Karemera (the “Challenged Order”).¹ On 5 June 2009, the Prosecution submitted its motion in English only and applied for reconsideration of, and alternatively certification to appeal, the Chamber’s directive regarding the simultaneous submission of its motion in English and French.² Joseph Nzirorera opposes the Prosecution’s request for reconsideration, but supports its request for certification to appeal.³ Matthieu Ngirumpatse opposes both of the Prosecution’s requests.⁴

DELIBERATIONS

2. The Chamber has the inherent power to reconsider its own decisions, but this is an exceptional remedy available only in particular circumstances. Reconsideration is permissible when, *inter alia*, there is reason to believe that its original decision was erroneous or constituted an abuse of power on the part of the Chamber, resulting in an injustice.⁵

3. The Chamber notes that the Challenged Order was made in an effort to expedite the proceedings by limiting the impact of translation delays. Indeed, as part of its overall responsibilities regarding the proper administration of this case, the Chamber has on numerous occasions invited the parties to cooperate with each other and to use their best

¹ T. 28 May 2009, p. 35.

² Prosecutor’s Submission concerning Admission of Documents used in Cross-Examination of Édouard Karemera, filed on 5 June 2009 (“Prosecution Motion”).

³ Joseph Nzirorera’s Response to Prosecution Motion for Admission of Exhibits Used with Édouard Karemera, filed on 8 June 2009.

⁴ Mémoire pour M. Ngirumpatse sur la requête du Procureur « for admission of exhibits used with Édouard Karemera » et en certification d’appel, filed on 8 June 2009.

⁵ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T (“*Karemera et al.*”), Decision on Joseph Nzirorera’s Motion for Reconsideration of 2 December 2008 Decision, 27 February 2009, para. 2.

46163

efforts and resources to reduce delays due to translation issues.⁶ The Chamber thus finds the Prosecution's assertions that the Challenged Order was made on the basis of extraneous or irrelevant considerations⁷ to be without merit.

4. The Chamber regrets moreover that the Prosecution is not able to use the resources at its disposal to reduce the impact of translations by complying with the Challenged Order. The Chamber acknowledges however that, as a matter of law, it cannot oblige the Prosecution to file its submissions in English and French.⁸ Accordingly, the Chamber deems it appropriate to reconsider the Challenged Order and allow the Prosecution to file its submissions in English only and arrange for its translation by the Registry. In view of the following, the Chamber does not deem it necessary to address the Prosecution's request for certification to appeal the Challenged Order.

5. With respect to the delay requested by the Defense to respond to the Prosecution's submission, the Chamber notes that there is no entitlement to have all of the documents in the case translated. The Chamber has previously considered on a case-by-case basis whether it was appropriate to grant an extension of time for the Defence to be served with a French translation of documents.⁹ The Chamber reiterates that the use of the bilingual resources among the Defence team may be used to guarantee and enhance the rights of the Accused.¹⁰ In the present case however, the Chamber is of the view that it is appropriate to grant an extension of time as sought by the Defence to respond to this motion.

⁶ See, e.g., T. 24 March 2005, p.5.

⁷ Prosecution Motion, para. 38.

⁸ *Prosecutor v. Mika Muhimana*, Case No. ICTR-95-I-B-1, 6 November 2001, para. 13; *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on Defence Application for Forwarding the Documents in the Language of the Accused, 25 September 1996, para 11.

⁹ See, e.g., *Karemera et al.*, Décision sur la requête d'Édouard Karemera aux fins de lui garantir un procès équitable, 28 October 2005, paras 5-13.

¹⁰ T. 9 September 2005, p. 3.

46162

FOR THESE REASONS, THE CHAMBER

RECONSIDERS its Oral Order of 28 May 2009;

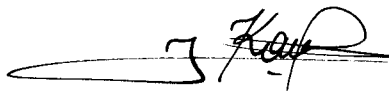
GRANTS the Prosecution's request to file its Motion in English only;

ACCORDS the Defence for Karemera and the Defence for Ngirumpatse five days to respond to the Prosecution's Motion from the date of the filing of the French translation.

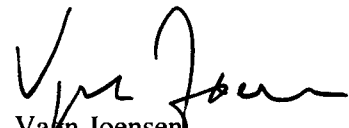
Arusha, 11 June 2009, done in English.



Dennis C. M. Byron
Presiding Judge



Gberdao Gustave Kam
Judge



Vagn Joensen
Judge

[Seal of the Tribunal]