

ICTR-98-44-T
23-6-2009
(46314-46311)

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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 23 June 2009

THE PROSECUTION

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

JUDICIAL RECORDS ARCHIVE
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**ORDER CONCERNING MEDIAL EXAMINATION OF MATTHIEU
NGIRUMPATSE**

Rules 54 and 74bis of the Rules of Procedure and Evidence

Office of the Prosecution:

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Peter Robinson and Patrick Nimy Mayidika Ngimbi

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INTRODUCTION

1. On 3 March 2009, the Chamber granted a Prosecution motion to sever Matthieu Ngirumpatse from this case.¹ On 19 June 2009, the Appeals Chamber reversed the Chamber's decision to sever Ngirumpatse and remanded the matter to the Chamber for further consideration.²

2. The Appeals Chamber found that Trial Chamber reached its conclusions on the prejudice which would be caused to the co-Accused, Édouard Karemera and Joseph Nzirorera, as a result of further delays occasioned by Ngirumpatse's illness without having assessed all relevant factors. In particular, the Appeals Chamber found that the Chamber should not have made its decision on severance by relying exclusively on a medical assessment that was provisional, lacking in detail, and disputed by the parties and in circumstances where it had no specific information concerning the nature of Ngirumpatse's medical problem.³

3. Rather than commencing the defence of Joseph Nzirorera on 23 June 2009 as previously scheduled, the Chamber invited the Parties and the Registrar to make oral submissions concerning the Severance Appeal. The Chamber requested the parties to address certain particular issues, including:

- i. the disclosure of information concerning the nature of Matthieu Ngirumpatse's medical problem; and,
- ii. the need for, and modalities of, soliciting an alternative medical assessment of Matthieu Ngirumpatse's medical condition and prognosis.

4. The Defence for Matthieu Ngirumpatse advised the Chamber that Ngirumpatse would not consent to the proceedings continuing in his absence. All parties and the Deputy Registrar agreed on the need for additional medical information concerning Matthieu Ngirumpatse's state of health.⁴

¹ *Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Continuation of Trial, 3 March 2009.

² *Karemera et al.*, Decision on Appeal concerning the Severance of Matthieu Ngirumpatse, 19 June 2009 ("Severance Appeal").

³ *Ibid.*, para. 22.

⁴ T. 23 June 2009.

DELIBERATIONS

5. Rule 74bis of the Rules provides that a Chamber may, *proprio muto* or at the request of a party, order a medical examination of an accused.
6. Having carefully considered the submissions of the parties⁵ and the Registrar, as well as the guidance provided by the Appeals Chamber in the Severance Appeal, the Chamber finds that additional information regarding Matthieu Ngirumpatse's state of health, prognosis and ability to participate in the trial is essential to a determination of the fair and expeditious continuation of the proceedings.
7. The Chamber further considers that a report from the Chief Medical Officer, as well as from an independent medical expert with no prior involvement in the case, is necessary to gain a full appreciation of the state of Matthieu Ngirumpatse's health. The Chamber appreciates, however, the need to protect Ngirumpatse's privacy to the fullest extent possible, while also ensuring the integrity of the proceedings and the right of the parties to be informed. Consequently, the Chamber orders that the medical reports shall be delivered to the Chamber on an *ex parte* basis, after receipt of which the Chamber will consider which portions, if any, shall be disclosed to the parties.

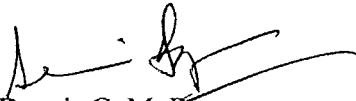
FOR THE FOREGOING REASONS, THE CHAMBER

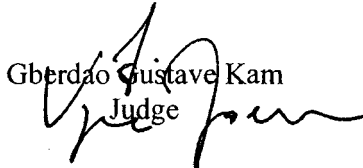
- I. **REQUESTS** the Registrar to request the Chief Medical Officer, Dr. Épée Hernandez, to prepare a report, with the assistance of expert medical advice as needed, on the following matters:
 - a. Matthieu Ngirumpatse's state of health, including details regarding his medical condition;
 - b. Matthieu Ngirumpatse's prognosis;
 - c. Matthieu Ngirumpatse's current fitness to participate in the proceedings, including in particular details regarding his ability to follow the proceedings, and for how many hours and days per week;

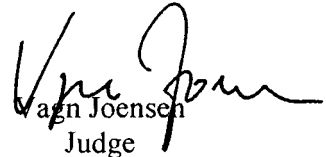
⁵ The Chamber notes that Joseph Nzirorera filed written submissions on the matter: Joseph Nzirorera's Memorandum Concerning Ngirumpatse Health Issues, filed 22 June 2009.

- d. Whether Matthieu Ngirumpatse will be able to personally participate in the proceedings in the future, and if so, when and for how many hours and days per week; and,
 - e. The basis upon which the conclusions made in the report were arrived at, in particular what materials were consulted and whether opinions of other physicians were taken into account. Any written medical opinions consulted should be attached to the medical report;
- II. **REQUESTS** the Chief Medical Officer to deliver the medical report to the Chamber, on a confidential and *ex parte* basis, by 3 July 2009;
- III. **REQUESTS** the Registrar to recommend to the Chamber an independent medical expert with no prior involvement in the case to prepare a report concerning Matthieu Ngirumpatse's state of health and prognosis, or to make submissions on the matter, by 1 July 2009;
- IV. **FINDS** that the proceedings shall be stayed until the receipt of medical reports from both the Chief Medical Officer and the independent medical expert, at which time the Chamber shall take a decision on the continuation of the proceedings.

Arusha, 23 June 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

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