



ICTR-98-44-AR65
17/09/2009
(2817/H - 2818/H)
Tribunal Pénal International pour le Rwanda
International Criminal Tribunal for Rwanda

2817/H
RMA

IN THE APPEALS CHAMBER

Before: Judge Patrick Robinson
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron
Judge Carmel Agius

Registrar: Mr. Adama Dieng

Decision of: 17 September 2009

ICTR Appeals Chamber
Date: 17/Sept/2009
Action:
Copied To: Concerned Judges,
Parties, Judicial Archives,
LDs, LSS
[Signature]

ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE
JOSEPH NZIRORERA
v.

THE PROSECUTOR

Case No. ICTR-98-44-AR65

**DECISION ON MATTHIEU NGIRUMPATSE'S MOTION
FOR EXTENSION OF TIME TO FILE APPEAL SUBMISSIONS
AGAINST TRIAL CHAMBER'S DECISIONS OF 10 SEPTEMBER 2009**

JUDICIAL RECORDS
2009 SEP 17 P 5:54
[Signature]

Office of the Prosecutor:

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
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: KOFFI... KUMELI... A... AFANDE
SIGNATURE: *[Signature]* DATE: 17 Sept. 2009

Counsel for the Defense:

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

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 "*Appel de Matthieu Ndirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 septembre 2009 et Demande de délai pour en déposer les motifs*", filed on 15 September 2009 ("Motion") by Matthieu Ndirumpatse ("Ndirumpatse").

Introduction

2. On 6 February 2009, Trial Chamber III of the Tribunal ("Trial Chamber") rejected Ndirumpatse's request for provisional release.¹ Ndirumpatse appealed this decision on 13 February 2009.²

3. On 3 March 2009, the Trial Chamber denied a motion to stay proceedings, severed Ndirumpatse from the *Karempera et al.* case, and ordered the trial of Ndirumpatse's co-accused, Édouard Karempera ("Karempera") and Joseph Nzirorera ("Nzirorera"), to continue on 23 March 2009.³ In the same decision, the Trial Chamber granted the parties certification to appeal.⁴ Ndirumpatse, Karempera, and Nzirorera appealed this decision.⁵

4. On 7 April 2009, the Appeals Chamber quashed the Decision on Provisional Release and remanded the matter to the Trial Chamber for reconsideration.⁶ On 19 June 2009, the Appeals Chamber reversed the Decision on Continuation of Trial and remanded the matter to the Trial Chamber for further consideration.⁷

¹ *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-T, Decision on the Various Motions Relating to Matthieu Ndirumpatse's Health, 6 February 2009 ("Decision on Provisional Release"), paras. 14-23, p. 10.

² *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-AR65, Ndirumpatse's Appeal from the Decision on Various Motions on Matthieu Ndirumpatse's Health Rendered on 6 February 2009, 13 February 2009.

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

⁴ Decision on Continuation of Trial, para. 61.

⁵ *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-AR73.16, *Mémoire d'Appel suite à la décision du 3 Mars 2009 relative à la continuation du procès*, 2 April 2009; *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-AR73.16, *Appel de Matthieu Ndirumpatse contre la « Decision on Continuation of Trial » du 3 Mars 2009*, 2 April 2009; *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-AR73.16, Joseph Nzirorera's Appeal from Decision to Sever Case of Mathieu [sic] Ndirumpatse, 2 April 2009.

⁶ *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-AR65, Decision on Matthieu Ndirumpatse's Appeal Against Trial Chamber's Decision Denying Provisional Release, 7 April 2009, para. 17.

⁷ *The Prosecutor v. Édouard Karempera et al.*, Case No. ICTR-98-44-AR73.16, Decision on Appeal Concerning the Severance of Matthieu Ndirumpatse, 19 June 2009, para. 25.

5. On 10 September 2009, the Trial Chamber issued its decision on remand regarding the continuation of the trial.⁸ The Trial Chamber found that there was no basis at this time to sever Ngirumpatse from the proceedings and accordingly vacated its initial Decision on Continuation of Trial.⁹ The Trial Chamber further ordered that the trial proceedings recommence on 19 October 2009 and requested the Chief Medical Officer of the Tribunal to provide the Trial Chamber and the parties with updated reports on the state of Ngirumpatse's health.¹⁰

6. On the same day, 10 September 2009, the Trial Chamber also issued its decision on remand regarding provisional release.¹¹ In light of the medical information in its possession and the resumption of the trial, the Trial Chamber found that there was no justification for Ngirumpatse's provisional release and, as a result, rejected his application for provisional release.¹²

7. In his Motion, Ngirumpatse notifies the Appeals Chamber and the parties that he appeals the Decision on Remand on Continuation of Trial and the Decision on Remand on Provisional Release (collectively "Impugned Decisions") and seeks an extension of time until 25 September 2009 to file his appeal submissions.¹³ In support of his request, Ngirumpatse submits that his Counsel were only able to inform him of the outcome of the Impugned Decisions on 11 September 2009 and that, on 15 September 2009 by 13:00 hours, he had not yet received copy of either of these decisions.¹⁴ He further submits that his Counsel were not authorized to travel to Arusha to meet with him from 13 to 18 September 2009 and that it was only on 14 September 2009 that he was informed that they would be authorized to do so from 23 to 26 September 2009.¹⁵ He argues that, given the importance of the issues at stake and the necessity of discussing confidential issues related to his health, the preparation of his appeal submissions requires that he be able to confer with his Counsel.¹⁶ Ngirumpatse adds that, because both appeals are closely related, the proper administration of justice demands that they be joined and ruled upon in a single decision.¹⁷

⁸ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Remand Regarding Continuation of Trial, 10 September 2009 ("Decision on Remand on Continuation of Trial").

⁹ Decision on Remand on Continuation of Trial, para. 19, p. 7.

¹⁰ Decision on Remand on Continuation of Trial, para. 19, pp. 7, 8.

¹¹ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Décision en renvoi sur la Requête de Matthieu Ngirumpatse en demande de mise en liberté provisoire*, 10 September 2009 ("Decision on Remand on Provisional Release").

¹² Decision on Remand on Provisional Release, para. 13, p. 6.

¹³ Motion, paras. 8-13.

¹⁴ Motion, paras. 4, 5, 12.

¹⁵ Motion, paras. 6, 7, 12, Annex.

¹⁶ Motion, paras. 9, 12.

¹⁷ Motion, para. 13.

2814/H

8. In light of the urgency of the matter and considering the fact that the Prosecution will not be prejudiced by the outcome of this decision, the Appeals Chamber finds it in the interests of justice to render this decision prior to the expiration of the deadline for filing a response to the Motion.

Discussion

9. The Decision on Remand on Provisional Release was issued by the Trial Chamber pursuant to Rule 65 of the Rules of Procedure and Evidence of the Tribunal ("Rules"), which provides for an appeal as of right within seven days of the filing of the impugned decision.¹⁸ Any appeal against this decision should therefore be filed no later than 17 September 2009. However, Rule 116(A) of the Rules allows the Appeals Chamber to extend a time limit upon a showing of good cause. In the particular circumstances of this case, in which sensitive medical issues need to be discussed, the Appeals Chamber considers that the need for Ngirumpatse to confer with his Counsel before filing his appeal against the Decision on Remand on Provisional Release constitutes good cause for the requested extension of time.

10. On the other hand, the Appeals Chamber notes that there is no appeal as of right from a decision ruling on the continuation of the trial or on the issue of separate trials. Rule 73(B) of the Rules provides that such decisions are without interlocutory appeal save with certification by the Trial Chamber. The Appeals Chamber notes that Ngirumpatse has not been granted certification by the Trial Chamber under Rule 73(B) of the Rules to appeal the Decision on Remand on Continuation of Trial. Absent such certification, the Appeals Chamber has no jurisdiction to address the merits of an appeal against the Decision on Remand on Continuation of Trial and, accordingly, no jurisdiction to rule on a request for extension of time to file such appeal.

11. The Appeals Chamber notes that the Impugned Decisions relate to a certain extent to similar issues and may require Ngirumpatse to raise and address closely related matters in his appeal. However, this does not open the possibility for circumventing the requirement of certification to appeal under Rule 73(B) of the Rules through a joint appeal against the Impugned Decisions. The Appeals Chamber emphasizes that the Trial Chamber issued two separate and distinct decisions, pursuant to different Rules. In addition, and as discussed above, the filing of appeal submissions against the Impugned Decisions is governed by different sets of provisions. The Appeals Chamber therefore finds that it would run contrary to the proper administration of justice to allow Ngirumpatse to file a single appeal against the Impugned Decisions.

¹⁸ Rule 65(D) of the Rules.

2813/H


Disposition

12. For the foregoing reasons, the Appeal Chamber **GRANTS** Ngirumpatse's requested extension of time to file his appeal against the Decision on Remand on Provisional Release and, accordingly, **ORDERS** him to file any appeal against this decision no later than 25 September 2009. The Appeals Chamber **DENIES** the remainder of the Motion.

Done this seventeenth day of September 2009,
at The Hague,
The Netherlands.



[Seal of the Tribunal]



Judge Patrick Robinson
Presiding