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ICTR-98-44-AR82
29-9-2009
(3147/A - 3138/A)
Tribunal Penal International pour le Rwanda
International Criminal Tribunal for Rwanda

3147/A
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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: 29 September 2009

ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE
JOSEPH NZIRORERA

v.

THE PROSECUTOR

Case No. ICTR-98-44-AR82

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**DECISION ON MATTHIEU NGIRUMPATSE'S FURTHER MOTIONS
FOR EXTENSION OF TIME AND MOTION FOR RECONSIDERATION
AND ON THE APPEAL FILED ON 25 SEPTEMBER 2009**

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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 two motions for extension of time and a motion for reconsideration filed on 17 September 2009 by Matthieu Ngirumpatse (“Ngirumpatse”). On 25 September 2009, the Appeals Chamber was further seized of the “*Mémoire d’appel de M Ngirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 Septembre 2009*” (“Appeal against Decision on Remand on Continuation of Trial”).

A. Background

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

3. On 3 March 2009, the Trial Chamber denied a motion to stay proceedings, severed Ngirumpatse from the *Karemera et al.* case, and ordered the trial of Ngirumpatse’s co-accused, Édouard Karemera (“Karemera”) 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 Ngirumpatse, Karemera, 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

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

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

³ *The Prosecutor v. Édouard Karemera 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 Karemera 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 Karemera et al.*, Case No. ICTR-98-44-AR73.16, *Appel de Matthieu Ngirumpatse contre la « Decision on Continuation of Trial » du 3 Mars 2009*, 2 April 2009; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.16, Joseph Nzirorera’s Appeal from Decision to Sever Case of Mathieu [sic] Ngirumpatse, 2 April 2009.

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

Chamber reversed the Decision on Continuation of Trial and remanded the matter to the Trial Chamber for further consideration.⁷

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 scheduled 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.¹²

7. On 15 September 2009, Ngirumpatse filed a motion before the Appeals Chamber requesting that the time-limit for filing his appeals against the Decision on Remand on Continuation of Trial and the Decision on Remand on Provisional Release be extended until 25 September 2009 and that the two appeals be joined and ruled upon in a single decision.¹³

8. On 17 September 2009, the Appeals Chamber (i) granted Ngirumpatse's requested extension of time to file his appeal against the Decision on Remand on Provisional Release; (ii) denied Ngirumpatse's request for extension of time to appeal the Decision on Remand on Continuation of Trial on the ground that Ngirumpatse had not been granted certification by the Trial

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

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 *Appel de Matthieu Ngirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 septembre 2009 et Demande de délai pour en déposer les motifs*, signed and filed 15 September 2009 ("First Motion for Extension of Time"), paras. 10-13.

Chamber to file such appeal; and (iii) denied Ngirumpatse's request that the two appeals be joined.¹⁴

9. On the same day the Appeals Chamber issued its Decision on Extension of Time, Ngirumpatse filed two further motions for extension of time to file appeals against the Decision on Remand on Continuation of Trial and the Decision on Remand on Provisional Release.¹⁵ Later that day, he also filed a "*Mémoire complémentaire urgent sur l'Appel de Matthieu Ngirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 septembre 2009*", which the Appeals Chamber understands to be a motion for reconsideration of its Decision on Extension of Time ("Motion for Reconsideration").

10. On 25 September 2009, Ngirumpatse filed the Appeal against the Decision on Remand on Continuation of Trial.

11. 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 responding to the motions.

B. Discussion

1. Preliminary Consideration

12. In his Motion for Reconsideration, Ngirumpatse submits that, on 15 September 2009, he filed two distinct motions for extension of time, one concerning the Decision on Remand on Provisional Release and the other concerning the Decision on Remand on Continuation of Trial.¹⁶ He argues that the Appeals Chamber failed to issue a "formal" decision ruling on the latter.¹⁷

13. The Appeals Chamber recalls that it issued a decision on Ngirumpatse's First Motion for Extension of Time on 17 September 2009,¹⁸ in which it disposed of Ngirumpatse's requests for extension of time to file appeals relating to both decisions. It clarifies that it is not aware of any

¹⁴ *The Prosecutor v. Édouard Karemera et al.*, 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, 17 September 2009 ("Decision on Extension of Time"), paras. 9-12.

¹⁵ *Appel de Matthieu Ngirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 septembre 2009 et Demande de délai pour en déposer les motifs*, signed and filed 17 September 2009 ("Second Motion for Extension of Time"); *Appel de Matthieu Ngirumpatse contre la « Decision en renvoi sur la Requête de Matthieu Ngirumpatse en demande de mise en liberté provisoire » et Demande de délai pour en déposer les motifs*, signed and filed 17 September 2009 ("Third Motion for Extension of Time").

¹⁶ Motion for Reconsideration, paras. 1-3.

¹⁷ Motion for Reconsideration, paras. 4, 5.

¹⁸ *See supra*, para. 8.

other motion filed before the Appeals Chamber by Ngirumpatse on 15 September 2009. As confirmed by the Registry, the First Motion for Extension of Time was the only request filed by Ngirumpatse on 15 September 2009 of which the Appeals Chamber was seized.¹⁹ The Second and Third Motions for Extension of Time were signed and filed on 17 September 2009. The Appeals Chamber received these motions after it issued its Decision on Extension of Time and they are the object of the present decision.

2. Further Motions for Extension of Time

14. The Appeals Chamber observes that, save for the date, the Second Motion for Extension of Time is a *verbatim* repetition of the First Motion for Extension of Time, which the Appeals Chamber disposed of on 17 September 2009. The Appeals Chamber accordingly considers the Second Motion for Extension of Time as moot.

15. The Appeals Chamber also notes that, although entitled and phrased somewhat differently, Ngirumpatse's Third Motion for Extension reiterates a request Ngirumpatse had already made in his First Motion for Extension of Time. Indeed, while primarily focusing on the Decision on Remand on Continuation of Trial, Ngirumpatse nonetheless explicitly requested an extension of time to file his appeal against the Decision on Remand on Provisional Release in his First Motion for Extension of Time,²⁰ and he puts forward the exact same arguments in his Third Motion for Extension of Time.²¹ Therefore, having already ruled on the merits of the request raised in Ngirumpatse's Third Motion for Extension of Time, the Appeals Chamber denies it as moot.

16. The Appeals Chamber emphasizes that the filing of submissions merely repeating arguments advanced in prior filings leads to a considerable waste of the Tribunal's resources and runs contrary to the interests of justice. The Appeals Chamber therefore reminds Ngirumpatse's Counsel to exercise greater diligence in preparing submissions.

3. Motion for Reconsideration

¹⁹ The Appeals Chamber also emphasises that the motion on which it ruled on 17 September 2009 was entitled "*Appel de Matthieu Ngirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 septembre 2009 et Demande de délai pour en déposer les motifs*" (emphasis added), which further suggests that Ngirumpatse's contention that the Appeals Chamber failed to "formally" issue a decision on his application filed on 15 September 2009 concerning the continuation of the trial is ill-founded. The fact that the Registry stamped and filed the First Motion for Extension of Time under the case number "ICTR-98-44-AR65" and that the Appeals Chamber issued its decision under the case number under which the Registry filed the motion is immaterial in the circumstances.

²⁰ First Motion for Extension of Time, paras. 11-13.

²¹ Compare First Motion for Extension of Time, paras. 4-13, with Second Motion for Extension of Time, paras. 5-15.

17. Upon receiving the Decision on Extension of Time, Ngirumpatse immediately applied before the Trial Chamber for certification to appeal the Decision on Remand on Continuation of Trial.²² Nonetheless, he also decided to reiterate his request for extension of time to file his appeal against this decision on the ground that the Appeals Chamber erred in finding that it had no jurisdiction to consider his request.²³ Relying on a decision issued by the Appeals Chamber of the International Criminal Tribunal for Former Yugoslavia (“ICTY”), Ngirumpatse argues that once the Appeals Chamber remands a matter to a Trial Chamber, it retains jurisdiction to ensure that the Trial Chamber’s decision on remand complies with its decision.²⁴ He therefore submits that his appeal against the Decision on Remand on Continuation of Trial was admissible without prior certification.²⁵ In addition, Ngirumpatse also reiterates his request that his appeals be joined, arguing that his request did not aim at circumventing procedural rules but, instead, at contributing to the proper administration of justice.²⁶

18. The Appeals Chamber recalls that it may reconsider a previous decision pursuant to its inherent discretionary power if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice.²⁷

²² Motion for Reconsideration, para. 7; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Demande de certification d’appel pour Matthieu Ngirumpatse contre la Decision on Remand Regarding Continuation of Trial du 10 septembre 2009*, 17 September 2009.

²³ Motion for Reconsideration, paras. 8-10.

²⁴ Motion for Reconsideration, para. 8, referring to *Prosecutor v. Gotovina et al.*, Case No. IT-06-90-AR73.3, Decision on Joint Request of Ante Gotovina and Mladen Markač for a Writ of Mandamus, 27 March 2009 (“*Gotovina Decision*”), para. 5.

²⁵ Motion for Reconsideration, para. 9.

²⁶ Motion for Reconsideration, para. 10.

²⁷ See, e.g., *Jean-Bosco Barayagwiza v. The Prosecutor*, Case No. ICTR-99-52A-R, Decision on Jean-Bosco Barayagwiza’s Motion for Review and/or Reconsideration of the Appeal Judgement of 28 November 2007, 22 June 2009, para. 14; *Alfred Musema-Uwimana v. The Prosecutor*, Case No. ICTR-96-13-R, Decision on Motion for Reconsideration of Decision on Request for Assignment of Counsel of 27 February 2009, p. 4; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Ngirumpatse’s Motion for Reconsideration, 5 October 2007, p. 3.

19. The Appeals Chamber agrees that it retains jurisdiction over a matter which it remanded to a Trial Chamber where the question as to whether the Trial Chamber complied with its instructions is at issue. In the present case, a reading of the Decision on Remand on Continuation of Trial, in particular of its outcome, clearly shows that the question as to whether the Trial Chamber complied with the Appeals Chamber's instructions is not at issue. The Appeals Chamber remanded the matter of severance to the Trial Chamber "for further consideration consistent with [the] opinion [set forth in the Appeal Decision on Severance]":²⁸ not only did the Trial Chamber further consider the remanded matter but it also found that there was no basis to sever Ngirumpatse from the proceedings. The instant case is, as a result, distinguishable from the ICTY decision Ngirumpatse relies on, where the ICTY Appeals Chamber concluded that it remained competent to address the appeal "to the extent" that the applicants were alleging that the Trial Chamber had failed to comply with the Appeals Chamber's decision.²⁹

20. The Appeals Chamber therefore concludes that Ngirumpatse has failed to show that it committed a clear error of reasoning in finding that, absent certification pursuant to Rule 73(B) of the Tribunal's Rules of Procedure and Evidence, it had "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".³⁰ Similarly, the Appeals Chamber finds that Ngirumpatse has failed to show that reconsideration is necessary to prevent an injustice. In this respect, the Appeals Chamber notes that, having made sure to issue its Decision on Extension of Time before the expiration of the time-limit for requesting certification, it allowed Ngirumpatse to apply for certification within the prescribed time-limit, which he did.

²⁸ Appeal Decision on Severance, para. 25. *See also ibid.*, paras. 18-24.

²⁹ *Gotovina* Decision, para. 5: "To the extent that the Joint Defence now submits that the Trial Chamber failed to address the two errors identified by the Appeals Chamber and thus challenges the same issues for which leave to appeal the 9 October 2009 Decision was originally granted, the Appeals Chamber remains competent to address the Joint request". The Appeals Chamber notes that in a prior decision, the ICTY Appeals Chamber ruled that certification was not required since it remained seized of the issues raised by the Prosecution in its initial appeal (*The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Following Trial Chamber's Decision on Remand and Further Certification, 11 May 2007, para. 18). The Appeals Chamber stresses that the ICTY Appeals Chamber's ruling in this case was case-specific and cannot be interpreted as a general statement of principle that certification is not required in case of remand.

³⁰ Decision on Extension of Time, para. 10.

21. As regards the request for joinder, the Appeals Chamber observes that, apart from submitting that he did not intend to circumvent any rules but instead to contribute to the proper administration of justice, Ngirumpatse has not put forward any argument which may justify reconsideration. The Appeals Chamber therefore declines to re-open the issue and summarily rejects Ngirumpatse's request in this regard.

22. Based on the above, the Appeals Chamber finds no merit in Ngirumpatse's Motion for Reconsideration.

4. Appeal against the Decision on Remand on Continuation of Trial

23. On 25 September 2009, Ngirumpatse filed the Appeal against the Decision on Remand on Continuation of Trial. Therein, he explains that he is convinced that, given the urgency of the matter and in the interests of justice, the Appeals Chamber will reconsider its Decision on Extension of Time and conclude that his appeal against the Decision on Remand on Continuation of Trial is admissible without prior certification.³¹ Ngirumpatse reiterates that the Appeals Chamber's conclusion that, absent certification, it had no jurisdiction to address the merits of an appeal against the Decision on Remand on Continuation of Trial must have been the result of an error. He further justifies the filing of his appeal by arguing that the Appeals Chamber failed to rule on his motion related to the continuation of the trial.³²

³¹ Appeal against the Decision on Remand on Continuation of Trial, para. 12. *See also ibid.* para. 15.

³² Appeal against the Decision on Remand on Continuation of Trial, paras. 10, 13, 14.

24. Ngirumpatse's contention that the Appeals Chamber failed to dispose of his request for extension on time to file an appeal against the Decision on Remand on Continuation of Trial is specious: in the Decision on Extension of Time, the Appeals Chamber unequivocally dismissed Ngirumpatse's request on the ground that it "ha[d] 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".³³ As discussed above,³⁴ the Appeals Chamber considers that it did not err in reaching its conclusion and declines to reconsider the issue. As a result, the Appeals Chamber reaffirms that, in the absence of certification by the Trial Chamber, it has no jurisdiction to consider the merits of Ngirumpatse's challenge against the Decision on Remand on Continuation of Trial and, accordingly, finds that Ngirumpatse's Appeal against the Decision on Remand on Continuation of Trial is inadmissible.

25. Ngirumpatse filed his Appeal against the Decision on Remand on Continuation of Trial against the Appeals Chamber's Decision on Extension of Time, without waiting for the Appeals Chamber's ruling on his Motion for Reconsideration. The Appeals Chamber was and is well aware of the urgency and the importance of the issues related to the continuation of the trial in this case but considers that this did not allow the Defence to act against its explicit ruling. The Appeals Chamber finds that the filing of the Appeal against the Decision on Remand on Continuation of Trial was inappropriate in the circumstances and cautions Ngirumpatse against such pre-emptive filing in future.

³³ Decision on Extension of Time, para. 10. *See also supra*, para. 13.

³⁴ *See supra*, paras. 19-20.

C. Disposition

26. For the foregoing reasons, the Appeal Chamber **DENIES** Ngirumpatse's Second and Third Motions for Extension of Time, as well as his Motion for Reconsideration. Further, the Appeals Chamber **DECLINES** to entertain Ngirumpatse's Appeal against the Decision on Continuation of Trial.

Done this twenty-ninth day of September 2009,
in Arusha,
Tanzania.



Judge Patrick Robinson
Presiding

[Seal of the Tribunal]

