



**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

3228/H

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ICTR-98-44-AR91.2

16<sup>th</sup> October 2009

{3228/H – 3225/H}

**IN THE APPEALS CHAMBER**

**Before:**

Judge Patrick Robinson, Presiding  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Theodor Meron  
Judge Carmel Agius

**Registrar:**

Mr. Adama Dieng

**Decision of:**

16 October 2009

ICTR Appeals Chamber

Date: 16<sup>th</sup> October 2009

Action: R. Guma

Copied To: Concerned Judges,

Parties, Judicial Archives,  
LSS, LOs

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**ÉDOUARD KAREMERA  
MATTHIEU NGIRUMPATSE  
JOSEPH NZIRORERA**

v.

**THE PROSECUTOR**

*Case No. ICTR-98-44-AR91.2*

**DECISION ON JOSEPH NZIRORERA'S MOTION FOR EXTENSION OF TIME TO FILE  
RESPONSE BRIEF**

**Counsel for the Applicant:**

Mr. Peter Robinson and Mr. Patrick Nimy Mayidika Ngimbi for Mr. Joseph Nzirorera

**Counsel for the Co-Accused:**

Ms. Dior Diagne Mbaye and Mr. Félix Sow for Mr. Édouard Karemera

Ms. Chantal Hounkpatin and Mr. Frédéric Weyl for Mr. Matthieu Ngirumpatse

**Office of the Prosecutor:**

Mr. Don Webster  
Mr. Saidou N'Dow  
Mr. Arif Virani  
Mr. Eric Husketh  
Ms. Sunkarie Ballah-Conteh  
Mr. Takeh Sendze

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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NAME / NOM: *KAREMERA, MATTHIEU NGIRUMPATSE, JOSEPH NZIRORERA*

SIGNATURE: *[Handwritten signature]* DATE: 16 Oct. 2009

**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),

**NOTING** the confidential "Decision on Motion to Prosecute BTH for Providing False Testimony (Rule 91(C) of the Rules of Procedure and Evidence)", issued by Trial Chamber III on 10 September 2009;<sup>1</sup>

**NOTING** the "Prosecutor's Notice of Appeal (Rule 77 and 91)"<sup>2</sup> and "Prosecution's Appeal from the 10 September 2009 'Decision on Motion to Prosecute BTH for Providing False Testimony (Rule 77 and 91)'"<sup>3</sup>, filed confidentially on 23 September 2009 and on 6 October 2009, respectively (collectively "Prosecution Appeal");

**BEING SEIZED OF** "Joseph Nzirorera's Motion for Extension of Time to File Response Brief", filed on 12 October 2009 ("Motion"),<sup>4</sup> in which Joseph Nzirorera ("Applicant"), requests the Appeals Chamber to grant him an extension of time to file his response to the Prosecution Appeal;<sup>5</sup>

**NOTING** that, pursuant to the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, the opposing party in appeal proceedings under Rule 91 of the Rules of Procedure and Evidence of the Tribunal ("Rules") shall file a response within ten days of the filing of the appeal brief;<sup>6</sup>

**NOTING** that the Applicant's response is accordingly due to be filed no later than 16 October 2009;

**CONSIDERING** the Applicant's submission that the Prosecution Appeal cites and relies on a confidential decision issued by Trial Chamber II of the the Tribunal in the case of *The Prosecutor v.*

<sup>1</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion to Prosecute BTH for Providing False Testimony (Rule 91(C) of the Rules of Procedure and Evidence), issued confidentially on 10 September 2009.

<sup>2</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR91.2, Prosecutor's Notice of Appeal (Rule 77 and 91), filed confidentially on 23 September 2009.

<sup>3</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR91.2, Prosecution's Appeal from the 10 September 2009 "Decision on Motion to Prosecute BTH for Providing False Testimony (Rule 77 and 91)", filed confidentially on 6 October 2009.

<sup>4</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR91.2, Joseph Nzirorera's Motion for Extension of Time to File Response Brief, 12 October 2009.

<sup>5</sup> Motion, para. 8.

<sup>6</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the Tribunal, 8 December 2006, para. 6.

*Casimir Bizimungu et al.* ("*Bizimungu et al.* Decision") to which he does not have access<sup>7</sup> and that it is important that he review this decision before he files his response;<sup>8</sup>

**FURTHER CONSIDERING** the Applicant's submission that the principle of *audi alteram partem* requires that both parties have equal access to the relevant jurisprudence of the Tribunal<sup>9</sup> and that where the Prosecution cites confidential decisions to which an accused does not have access, it violates that accused's right to equality of arms;<sup>10</sup>

**NOTING** that on 7 October 2009, the Applicant filed a confidential motion before Trial Chamber II requesting access to the *Bizimungu et al.* Decision or a public redacted version thereof, which is pending ("Pending Motion"),<sup>11</sup> and that he submits that he requires an extension of time of seven days from the date on which he will be granted access to the *Bizimungu et al.* Decision or a public redacted version thereof;<sup>12</sup>

**RECALLING** that the Appeals Chamber may extend a time limit upon a showing of good cause pursuant to Rule 116(A) of the Rules;

**FINDING** that the Applicant's request for access to the confidential *Bizimungu et al.* Decision which is still pending constitutes good cause within the meaning of Rule 116 of the Rules, and thus merits a extension of time for the filing of the Applicant's response;

**FINDING, HOWEVER,** that the requested extension of time of seven days from being granted access to the *Bizimungu et al.* Decision or a public redacted version thereof is not justified in the circumstances;

**CONSIDERING** that the interests of justice warrant rendering this decision without delay and prior to the expiry of the deadline for the filing of the Prosecution's response to the Motion;

**FINDING** that the Prosecution will not be prejudiced by this decision;

**FOR THE FOREGOING REASONS,**

**HEREBY GRANTS** the Motion; and

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<sup>7</sup> Motion, para. 3.

<sup>8</sup> Motion, para. 8.

<sup>9</sup> Motion, para. 6.

<sup>10</sup> Motion, para. 7.

<sup>11</sup> *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Joseph Nzirorera's Motion for Access to Confidential Decision, filed confidentially on 7 October 2009.

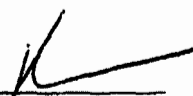
<sup>12</sup> Motion, para. 8.

**ORDERS** the Applicant to file any response to the Prosecution Appeal within three (3) days of being granted access to the confidential *Bizimungu et al.* Decision or the filing of a public redacted version thereof.

Done this 16th day of October 2009,  
at The Hague,  
The Netherlands.



[Seal of the Tribunal]

  
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Judge Patrick Robinson  
Presiding