



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: 12 August 2010

THE PROSECUTION

v.

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

SCHEDULING ORDER

Rule 54 of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
Sunkarie Ballah-Conteh
Takeh Sendze

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

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

1. On 10 May 2010, this Chamber ordered the commencement of Matthieu Ngirumpatse's defence case on 5 July 2010¹, but on 1 July 2010 the Chamber cancelled the trial session². The Chamber recalls that Joseph Nzirorera died on 1 July 2010 at the Arusha Lutheran Medical Centre in Arusha, Tanzania.³ At the time of his death, a number of Nzirorera's motions were pending before the Chamber.⁴
2. The Chamber notes that Matthieu Ngirumpatse and Édouard Karemera have already made submissions on the impact of Joseph Nzirorera's death on the trial and requests for a status conference.⁵ The Prosecutor filed a Consolidated Response to both motions, rejecting arguments to adjourn the proceedings and not opposing the requests for a status conference.⁶ Ngirumpatse and Karemera both filed replies to the Prosecutor's Response⁷, and the Prosecutor filed a sur-reply to address the legal arguments Ngirumpatse and Karemera raised for the first time in their replies⁸. On 3 August 2010, Ngirumpatse filed a second motion for a status conference before the beginning of the next trial session⁹, to which the Prosecution also responded¹⁰.

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Scheduling Order (TC), 10 May 2010.

² E-mail dated 1 July 2010 from Constant Hometowu, Coordinator of Trial Chamber III, to the parties.

³ Registrar's Submission Notifying the Demise of Joseph Nzirorera, filed 2 July 2010.

⁴ The motions pending before the Chamber are: Joseph Nzirorera's 29th Notice of Rule 66 Violation, 20th Notice of Rule 68 Violation and Motion for Remedial Measures, filed on 12 March 2010; Joseph Nzirorera's 21st Notice of Rule 68 Violation and Motion for Remedial Measures: Witness FH, filed on 29 March 2010; Joseph Nzirorera's Motion for Permission to Exceed 55 witnesses, filed on 10 May 2010; Joseph Nzirorera's Motion to Preclude Cross-Examination on Benin Statement, filed on 18 May 2010; a motion filed confidentially on 24 May 2010; and Joseph Nzirorera's Motion for Video-Link: Amadou Deme, filed on 15 June 2010.

⁵ Requête de Matthieu Ngirumpatse aux fins de mise en état de la procédure, filed on 19 July 2010; Requête sur la nécessité d'une conférence de mise en état avant la reprise de la prochaine session, filed on 20 July 2010.

⁶ Prosecutor's Consolidated Response to << Requête de Matthieu Ngirumpatse aux fins de mise en état de la procédure >> and Édouard Karemera's << Requête sur la nécessité d'une conférence de mise en état avant la reprise de la prochaine session >>, filed on 23 July 2010.

⁷ Réplique de M Ngirumpatse à la << Prosecutor's Consolidated Response to << Requête de Matthieu Ngirumpatse aux fins de mise en état de la procédure >> and Édouard Karemera's << Requête sur la nécessité d'une conférence de mise en état avant la reprise de la prochaine session >>, filed 28 July 2010; Réplique de Édouard Karemera à la << Prosecutor's Consolidated Response >>, filed on 28 July 2010.

⁸ Prosecutor's Sur-Reply to Karemera's and Ngirumpatse's Replies to Prosecution Consolidated Response to << Requête de Matthieu Ngirumpatse aux fins de mise en état de la procédure >> and Édouard Karemera's << Requête sur la nécessité d'une conférence de mise en état avant la reprise de la prochaine session >>, filed on 4 August 2010.

⁹ Deuxième Requête Urgente de Matthieu Ngirumpatse Quant Aux Suites de la Procédure, filed on 3 August 2010.

¹⁰ Prosecutor's Response to << Deuxième Requête Urgente de Matthieu Ngirumpatse Quant Aux Suites de la Procédure >>, filed on 5 August 2010.

3. The Chamber recognizes that this is a unique situation, where an accused person in a multi-accused case died before the completion of his Defence case.¹¹ As such, it considers that, in the interests of justice, written submissions by the Prosecution and each of the Defence teams, are necessary to determine a resolution of the legal and factual issues and consequences that have arisen or are likely to arise in the judicial determination of the case against the Accused persons as a result of the death of Joseph Nzirorera. Particularly, the Chamber invites the Parties to discuss within their submissions their position on what should be done in relation to the Indictment allegations against Nzirorera, what should be done with evidence adduced to date, and whether the examination of witness Théoneste Bagosora should continue when the trial resumes in August 2010. The Chamber additionally invites the parties to raise any issues of concern not previously addressed in writing at this time.

4. The Chamber notes that a status conference may be necessary to hear the parties on issues raised in the written submissions before the resumption of the trial session. As such, the Chamber deems it prudent to schedule a status conference at 8:45 a.m. on 23 August 2010, lasting no longer than one hour, for that possibility. However, the Chamber advises the parties to raise all applicable issues in the written submissions as the Chamber will use the time allotted to clarify the positions of the parties and not to hear arguments relating to new issues.

FOR THESE REASONS, THE CHAMBER

- I. ORDERS** that the next trial session start with a status conference on 23 August 2010 beginning at 8:45 a.m., and lasting for one hour, if needed, to deal with issues raised in written submissions; and

¹¹ Cf. *Prosecutor v. Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa*, Case No. SCSL-04-14-T, Decision on Registrar's Submission of Evidence of Death of Accused Samuel Hinga Norman and Consequential Issues (TC), 21 May 2007 (where First Accused Samuel Hinga Norman died after the close of the case but before Judgement was rendered for the three accused persons); *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya, and Dominic Ongwen*, Case No. ICC-02/04-01/05, Decision to Terminate the Proceedings Against Raska Lukwiya, 11 July 2007 (where Fourth Accused Raska Lukwiya died before being arrested or brought to trial); *Prosecutor v. Mile Mrkšić, Miroslav Radić, Veselin Šljivančanin, and Slavko Dokmanović*, Case No. IT-95-13A-T, Order Terminating Proceedings Against Slavko Dokmanović (TC), 15 July 1998 (where proceedings against Fourth Accused were terminated upon his death, while the trial continued for his co-Accused).

- II. INVITES** the Parties to make written submissions by 20 August 2010 on how the death of Joseph Nzirorera impacts the proceedings, including any issues not yet raised in written submissions.

Arusha, 12 August 2010, done in English.

Dennis C. M. Byron
Presiding Judge

Gberdao Gustave Kam
Judge

Vagn Joensen
Judge

[Seal of the Tribunal]