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UNITED NATIONS
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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 3 September 2010

THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE**

JUDICIAL RECORDS/ARCHIVES
UNICTR
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**DI CISION ON MATTHIEU NGIRUMPATSE'S MOTION FOR AFTERCARE AND
POSTPONEMENT OF RESUMPTION OF TRIAL**

Rules 73 (B) and 74 bis of the Rules of Procedure and Evidence

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The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse, Case No. ICTR-98-44-T

CI/11-0142 (E)

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INTRODUCTION

1. On 31 May 2010, Matthieu Ngirumpatse filed a motion requesting the Chamber to order the Tribunal's Chief Medical Officer, Dr Épée, to specify when and where a sclerosis of the varicose veins posing risks for him would be performed, and where and when the *fibrotest* and *fibrosca* recommended by the medical expert, Dr Biclet, would be carried out, and also to provide him with the results of the blood tests and X-rays from his medical tests carried out in Nairobi.¹ He further requested the Chamber to order an assessment to be conducted by an independent doctor of his choice, paid for by the Registry, in order to document certain issues relating to his health.² Lastly, he urged the Chamber to take into account his weak physical condition by reducing the duration of the hearing.³ On 7 June 2010, the Prosecutor filed a response objecting to most of Matthieu Ngirumpatse's requests.⁴

2. On 21 June 2010, Matthieu Ngirumpatse filed a supplementary motion indicating that the first request contained in his motion of 21 May 2010 had become moot, but reiterating all the others.⁵ He also requested the Chamber to postpone the hearing of 24 June 2010,⁶ to ask the Registry to take the necessary measures to enable his family to visit him again⁷ and, in the event that his request was rejected in its entirety or partially, to grant him certification to appeal the decision that the Chamber would take.⁸ The Prosecutor filed a response to the supplementary motion.⁹

DELIBERATIONS

3. Under Rule 74 *bis* of the Rules of Procedure and Evidence (the "Rules"), a Trial Chamber may, *proprio motu* or at the request of a party, order a medical examination, including a psychiatric examination, of the accused.

4. In his initial motion, Matthieu Ngirumpatse requested the Chamber to direct the Tribunal's Chief Medical Officer to specify when and where the sclerosis of the varicose veins posing risks for him would be performed, as recommended by Dr Biclet and Ngirumpatse's attending physicians in Nairobi.¹⁰ However, he indicated in his supplementary motion that he was transferred to hospital on 15 June 2010 to undergo cauterization of the varices,¹¹ and that his

¹ Matthieu Ngirumpatse's Urgent Motion for Aftercare, filed on 31 May 2010 ("Matthieu Ngirumpatse's Motion").

² *Ibid.*, para. 41 (d).

³ *Ibid.*, para. p. 9 (FV).

⁴ Prosecutor's Response to "*Requête urgente de Matthieu Ngirumpatse aux fins de suivi médical*", filed on 7 June 2010 ("Prosecutor's Response").

⁵ *Requête complémentaire de Matthieu Ngirumpatse aux fins de suivi médical et d'ajournement*, filed on 21 June 2010 ("Supplementary Motion").

⁶ *Ibid.*, para. 16.

⁷ *Ibid.*, para. 17.

⁸ *Ibid.*, para. 18.

⁹ Prosecutor's Consolidated Response to "*Requête complémentaire de Matthieu Ngirumpatse aux fins de suivi médical et d'ajournement urgente*" and "*Nouveau mémoire urgent de Matthieu Ngirumpatse sur la modification des conditions de détention*", filed on 24 June 2010 ("Prosecutor's Consolidated Response").

¹⁰ Matthieu Ngirumpatse's Motion, para. 40 [*sic*] (a).

¹¹ Supplementary Motion, para. 5.

request had therefore become moot.¹² The Chamber takes note of the clarification and confirmation by the Tribunal's Chief Medical Officer that the said treatment was administered,¹³ and consequently rules the request moot.

5. Matthieu Ngirumpatse requests the Chamber in addition to order the Tribunal's Chief Medical Officer to specify when and where the *fibrotest* and *fibroskan* recommended by the independent medical specialist, Dr Biclet, would be performed.¹⁴

6. The Chamber recalls that in his report of August 2009, Dr Biclet indicated that the *fibrotest* (biological examination) and the *fibroskan* (imaging examination) were important in assessing the gravity of the illness and its prognostics, but that they would not have entailed a change of treatment and had no direct relevance to the treatment.¹⁵ Furthermore, in his comments of February 2010, Dr Biclet concluded that it was necessary to check the condition of Matthieu Ngirumpatse's esophagus, but that this was not an emergency, and recommended documentation of possible cirrhosis through non-invasive methods, namely, *fibroskan* and *fibrotest*.¹⁶ However, the Tribunal's Chief Medical Officer, who is responsible for monitoring the physical and mental health of detainees,¹⁷ stated in her report of 1 March 2010 that the possibility of performing a *fibroskan* had been considered and that it had been concluded that there was no need for such a test.¹⁸ Dr Épée also gave the assurance that Matthieu Ngirumpatse would remain under close medical supervision¹⁹ and she continued to report to the Chamber about his health.²⁰

7. The Chamber believes that it is necessary for the Tribunal's Chief Medical Officer to continue monitoring Matthieu Ngirumpatse's health and allow him access to the medical services necessitated by his condition. However, it is not necessary to order the Tribunal's Chief Medical Officer to specify when and where the *fibrotest* and *fibroskan* would be performed, as long as his doctors do not find such tests necessary.

8. Matthieu Ngirumpatse also urges the Chamber to order the Tribunal's Chief Medical Officer to disclose to him the results of his blood tests and X-ray pictures from his medical examinations carried out in Nairobi.²¹ He explains that during his hospitalization in Nairobi on 12, 13 and 14 May 2010, he underwent a series of check-ups, and that the discovery of new infections necessitated additional tests whose results were not disclosed to him.²² He stresses that he was not given any X-ray pictures (of the CT Scan, endoscopy and coloscopy) nor any results

¹² *Ibid.* para. 10.

¹³ Medical Report for Matthieu Ngirumpatse (Interoffice Memorandum), 23 June 2010, p. 1.

¹⁴ Matthieu Ngirumpatse's Motion, para. 40 [*sic*] (b).

¹⁵ Dr Biclet's report, filed on 11 August 2009, p. 4.

¹⁶ Dr Biclet's Comments on Matthieu Ngirumpatse's Health, filed on 5 February 2010, p. 4.

¹⁷ Rule 31 of the Rules Covering the Detention of Persons Awaiting Trial or Appeal Before the International Criminal Tribunal for Rwanda; See *The Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), *Décision sur la Requête de Matthieu Ngirumpatse suite aux commentaires du Dr. Epée et du Dr. Biclet*, 5 May 2010, para. 4.

¹⁸ Follow-up Medical Report and Response to Matthieu Ngirumpatse's Queries, filed on 2 March 2010, para. 6.

¹⁹ Follow-up Medical Report for Mr Ngirumpatse, 19 May 2010, para. 10.

²⁰ See Medical Report for Mr M. Ngirumpatse, 23 June 2010.

²¹ Matthieu Ngirumpatse's Motion, para. 40 [*sic*] (c).

²² *Ibid.*, para. 4.

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of the blood tests, although they are available from the Tribunal's Chief Medical Officer.²³ The Prosecutor supports this request and believes that it is critical for the Applicant to have access to the reports and results of his medical tests.²⁴ The Chamber is of the opinion that Matthieu Ngirumpatse should personally have access to his medical file²⁵ and that the Registrar should continue to disclose to him any information in his medical file that he may request.

9. Matthieu Ngirumpatse further requests the Chamber to order an assessment by an independent doctor of his choice, to be paid for by the Registry, in order to find answers to some questions pertaining to his health, especially the causes of the recurrent varicose veins, and also to determine the state of his liver and its evolution.²⁶ He alleges that the various medical opinions given by the doctors are contradictory and that the opinions given by each practitioner are based on the circumstances.²⁷

10. This is not the first time that Matthieu Ngirumpatse is submitting such a request to the Chamber.²⁸ The Applicant has indeed continued to challenge, in a selective manner, some of the conclusions made by the Tribunal's Chief Medical Officer and his other attending physicians, with a view to having a new assessment carried out by a doctor of his choice. However, neither Ngirumpatse nor his Defence team has the requisite medical expertise and the Chamber therefore cannot rely solely on their statements²⁹ to find fault with the conclusions of the Tribunal's Chief Medical Officer or those of the attending physicians. Moreover, Ngirumpatse does not provide any tangible information to warrant the Chamber's approval of his request. The request must therefore be dismissed.

11. Matthieu Ngirumpatse also prays the Chamber to take into account his weak physical condition by reducing the duration of the hearings.³⁰ The Chamber takes note of the findings in the reports by the Tribunal's Chief Medical Officer regarding Matthieu Ngirumpatse's condition,³¹ particularly the latest one indicating that Matthieu Ngirumpatse is fit enough to continue participating in his trial,³² and deems it inappropriate to grant the request in this case.

²³ *Ibid.* para. 5.

²⁴ Prosecutor's Response, para. 3.

²⁵ See *Karemera et al.*, "Decision on the Various Motions Relating to Mathieu Ngirumpatse's Health", 2 February 2009, para. 11.

²⁶ Matthieu Ngirumpatse's Motion, para 40; Supplementary Motion, para. 16 (b).

²⁷ Matthieu Ngirumpatse's Motion, para. 18.

²⁸ See *Requête en urgence de Matthieu Ngirumpatse en suite de la "Decision on Remand Regarding Continuation of Trial"*, 10 November 2009; *Réplique de M. Ngirumpatse à la réponse du Procureur sur sa requête en urgence en suite de la "Decision on Remand Regarding Continuation of Trial"*, 17 November 2009.

²⁹ *Karemera et al.*, *Décision sur la Requête de Matthieu Ngirumpatse suite aux commentaires du Dr. Epée et du Dr Bilet*, 5 May 2010, para. 4.

³⁰ Matthieu Ngirumpatse's Motion, p. 9; Supplementary Motion, para. 15.

³¹ The Chamber refers particularly to the report by the Chief Medical Officer, Dr. Epée, filed on 11 December 2009, in which she indicated that Matthieu Ngirumpatse was in a stable and satisfactory condition and thus able to participate in the hearings, six hours a day (Follow-up medical Report for Mr Ngirumpatse, 11 December 2009, para. 1), and to the Chief Medical Officer's report of 2 March 2010, indicating that Matthieu Ngirumpatse was still capable of participating in his trial on this basis (Follow-up Medical Report and Response to Mr Ngirumpatse's Queries, filed on 2 March 2010, para. 10).

³² Medical Report for Matthieu Ngirumpatse (Internal memorandum), 23 June 2010, para. 6.

The Chamber however recalls that it continues to closely monitor Matthieu Ngirumpatse's health and will take it into account in scheduling the hearings.

12. The Chamber believes that Matthieu Ngirumpatse's request to postpone the hearing to 24 June 2010 is now moot.³³

13. Matthieu Ngirumpatse requests the Chamber to ask the Registry to take the necessary measures to enable his family to visit him again.³⁴ He argues that he was transferred to hospital unexpectedly on 15 June 2010, just when some members of his family living in the United States had come to visit him, and that the visit was [unjustly curtailed following a change in the schedule], thereby forcing his family to incur unnecessary expenses and putting him and his family in an inhuman situation.³⁵ The Chamber recalls that the situation referred to by Matthieu Ngirumpatse was dictated by the circumstances relating to the Accused's medical treatment schedule, over which the Registry has no control. The Chamber requests the Registry to continue facilitating visits by Matthieu Ngirumpatse's family members, strictly in conformity with the rules in force and the needs relating to the Applicant's health.

14. Lastly, in the event that his request is denied in whole or in part, Matthieu Ngirumpatse requests the Chamber to grant him certification to appeal the decision that the Chamber will render. In support of his request, the Applicant merely states that it is obvious that the immediate solution of these recurrent problems by the Appeals Chamber would materially advance the proceedings.³⁶ In the opinion of the Chamber, this statement alone is insufficient to show the existence of the conditions provided under Rule 73 (B) of the Rules to grant certification of appeal. The request must therefore be dismissed.

FOR ALL THESE REASONS, the Chamber:

- I. **GRANTS** Mathieu Ngirumpatse's Motion in part;
- II. **REQUESTS** the Registrar to ensure that Mathieu Ngirumpatse continues to have access to all the information in his medical file;
- III. **REQUESTS** the Tribunal's Chief Medical Officer to continue monitoring Matthieu Ngirumpatse's health, to allow him access to the medical care that he requires and to determine to what extent the *fibroskan* and *fibrotest* are necessary;
- IV. Further **REQUESTS** the Tribunal's Chief Medical Officer to continue providing the Chamber every three weeks during the next three months with a report on Matthieu Ngirumpatse's health and his ability to participate in the trial; and

³³ Supplementary Motion, para. 16.

³⁴ *Ibid.*, para. 17.

³⁵ *Ibid.*, paras. 6 and 7.

³⁶ Supplementary Motion, para. 18.

- V. **REQUESTS** the Registry to continue to take all the necessary measures to facilitate visits by members of Matthieu Ndirumpatse's family, in conformity with the rules in force and taking into account the needs arising from his medical condition.

Arusha 3 September 2010.

[Signed]

Denis C. M. Byron
Presiding Judge

[Signed for]

Judge Gberdao Gustave Kam

[Signed]

Judge Vagn Joensen

[Seal of the Tribunal]

