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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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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: 25 November 2010

THE PROSECUTOR

v.

**ÉDOUARD KAREMERA
MATTHIEU NGIRUMPATSE**

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**DECISION ON MATTHIEU NGIRUMPATSE'S MOTION FOR
RECONSIDERATION OR, ALTERNATIVELY, CERTIFICATION TO APPEAL
THE DECISION OF 27 OCTOBER 2010**

Rule 73 of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Takeh Sendze
Maria Wilson
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Defence Counsel for Édouard Karemera:
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse:
Chantal Hounkpatin and Frédéric Weyl

CIII10-0185 (E)

Translation certified by LSS, ICTR

INTRODUCTION

1. On 3 November 2010, Matthieu Ngirumpatse filed a motion for the correction of a material error committed by the Chamber in ordering the non-payment of fees associated with certain motions. Alternatively, he requests reconsideration of the sanction imposed on Counsel in the 27 October 2010 Decision¹ and, in further alternative, requests certification to appeal the impugned Decision with regard to the sanction imposed on Counsel.² The Prosecutor opposed the Motion.³

DELIBERATIONS

Reconsideration

2. The Chamber has the inherent power to reconsider its decisions. Nevertheless, the Chamber exercises such power only in exceptional circumstances.⁴ Thus, the Chamber may reconsider one of its decisions where a new fact has been discovered that was not known to the Chamber, and where there is reason to believe that its original decision demonstrated a clear error of reasoning or constituted an abuse of power on the part of the Chamber, resulting in an injustice, thereby warranting reconsideration.⁵

3. Matthieu Ngirumpatse submits that in its Decision of 27 October 2010, the Chamber, without any explanation, imposed a new sanction by directing the Registrar to deny payment of fees associated with the Motion. He contends that the sanction is unfair and arbitrary and that it seems to be a corollary of the one that was imposed previously or that it shows how measures systematically end up assuming a vexatious character.⁶ He further submits that since the sanction is not supported by a reasoned opinion, it is unfair and arbitrary.⁷ Lastly, Matthieu Ngirumpatse argues that, if the sanction is as a result of inadvertence on the part of the Chamber, the material

¹ *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T ("*Karemera et al.*"), "Decision on Matthieu Ngirumpatse's Motions Regarding His Witnesses and Admission of Written Statements", 27 October 2010.

² Matthieu Ngirumpatse's Motion for Reconsideration and Alternatively for Certification to Appeal the Decision of 27 October 2010, filed on 3 November 2010 ("Motion").

³ Prosecutor's Response to "*Requête de Matthieu Ngirumpatse aux fins de reconsidération et subsidiairement de certification d'appel de la Décision du 27 octobre 2010*", filed on 8 November 2010.

⁴ *Karemera et al.*, "Decision on Joseph Nzirorera's Motion for Reconsideration of 2 December 2008 Decision", 27 February 2009, para. 2.

⁵ *Karemera et al.*, "Decision on Joseph Nzirorera's Second Motion for Finding of 'No Case to Answer' and Motion for Reconsideration", 3 June 2008, para. 5; "Decision on Reconsideration of Protective Measures for Prosecution Witnesses," 30 October 2006, para. 2; *The Prosecutor v. Augustin Ndingiyimana, Augustin Bizimungu, François-Xavier Nzuwonemeye and Innocent Sagahutu*, "Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials", 3 November 2004, para. 21.

⁶ Motion, paras. 6 and 7.

⁷ *Ibid.*, para. 8.

error occasioned thereby must be corrected. The sanction being an error, maintaining it occasions such injustice that it requires reconsideration by the Chamber.⁸

4. As it did in its Decision of 1 September 2010,⁹ the Chamber emphatically recalls here that, on 17 September 2008, it ordered Matthieu Ndirumpatse to file, no later than 1 October 2008, his motion for admission of written statements pursuant to Rule 92 *bis* of the Rules.¹⁰ On 1 October 2008, Matthieu Ndirumpatse did file a motion, praying the Chamber to admit 19 statements, most of which were not signed.¹¹ On 15 July 2009, the Chamber ordered Matthieu Ndirumpatse to file signed statements within a time limit of two months.¹² On 14 September 2009, he filed a Brief, as well as 18 statements signed by the deponents,¹³ and the Chamber ruled on their admissibility on 11 November 2009.¹⁴ In his Motion of 28 June 2010,¹⁵ Matthieu Ndirumpatse provided no reason for his failure to request admission of the 57 written statements in question within the time limit set in the Chamber's Decision of 17 September 2008. The Chamber took note of it in its Decision of 1 September 2010 and held that it would have been quite justified to dismiss Matthieu Ndirumpatse's Motion. The Chamber also recalled that Matthieu Ndirumpatse had, on several occasions, ignored the Chamber's orders relating to the preparation of his defence.¹⁶ Hence the Chamber deemed it proper to order the non-payment of all fees and costs due in respect of the Motion for the admission of 57 additional written statements, pursuant to Rule 92 *bis*.¹⁷

⁸ *Ibid.*, para. 9.

⁹ *Karemera et al.*, "Decision on *Requête de Matthieu Ndirumpatse visant à l'admission de déclarations sur le fondement de l'article 92 bis du règlement*," 1 September 2010, para. 2.

¹⁰ *Karemera et al.*, "Decision on Matthieu Ndirumpatse's Motions for Reconsideration and Extension of Time-Limits for the Presentation of His Case", 17 September 2008.

¹¹ Motion by Matthieu Ndirumpatse for the Admission of Written Statements Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, 1 September 2008 [*sic*].

¹² *Karemera et al.*, Order Subsequent to Matthieu Ndirumpatse's Motion for Admission of Statements Pursuant to Rule 92 *bis* of the Rules, 15 July 2009.

¹³ Ndirumpatse's Brief following the Order of 15 July 2009 subsequent to Matthieu Ndirumpatse's Motion for Admission of Statements pursuant to Rule 92 *bis* of the Rules, filed on 14 September 2009.

¹⁴ *Karemera et al.*, "Decision on Motion by Matthieu Ndirumpatse for the Admission of Statements Pursuant to Rule 92 *bis* of the Rules and for the Protection of Witnesses", 11 November 2009.

¹⁵ Matthieu Ndirumpatse's Motion for Admission of Additional Written Statements Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, 28 June 2010.

¹⁶ *Karemera et al.*, "Decision on *Requête de Matthieu Ndirumpatse visant à l'admission de déclarations sur le fondement de l'article 92 bis du Règlement*", 1 September 2008 [*sic*], para. 3; Reconsideration of the Decision of 27 February 2008 on the Resumption of Trial and Commencement of the Defence Case, 6 March 2008; "Decision on Matthieu Ndirumpatse's Request for Extension of Time to File Rule 73 *ter* Materials", 2 April 2008; "Decision on the Commencement of the Defence Case", 17 April 2008 and Corrigendum of 22 April 2008; Order on Matthieu Ndirumpatse's Brief Following the 17 April 2008 Decision on the Presentation of the Defence Evidence, 25 June 2008; "Consolidated Decision on the Various Filings by Matthieu Ndirumpatse under Rule 73 *ter* of the Rules and on those of the Prosecutor", 5 July 2010.

¹⁷ *Karemera et al.*, "Decision on *Requête de Matthieu Ndirumpatse visant à l'admission de déclarations sur le fondement de l'article 92 bis du Règlement de procédure et de preuve*," 1 September 2008 [*sic*], para. 3.

5. Following a motion for certification to appeal the Decision of 1 September 2010,¹⁸ the Chamber granted Matthieu Ngirumpatse's request regarding the sanction of 1 September 2010 imposed on his Counsel. Moreover, the Chamber granted him leave to submit the rejected written statements within 10 days.¹⁹

6. Lastly, in its 27 October 2010 Decision on several motions filed by Matthieu Ngirumpatse with respect to his case, the Chamber ordered only the non-payment of all related fees and costs in respect of the Motion for Reconsideration of the 1 September 2010 Decision and the requests for admission of additional written statements.²⁰

7. The Chamber's Decision of 27 October 2010 ordering non-payment in respect of motions relating to the admission of written statements pursuant to Rule 92 *bis* of the Rules is, therefore, as Matthieu Ngirumpatse himself pointed out, the logical application of its 1 September 2010 Decision which was rendered under the same circumstances. Accordingly, the Chamber considers that there has been no error nor abuse of power on its part.

Certification of Appeal

8. Rule 73(B) of the Rules provides that certification of appeal may only be granted if two requirements are fulfilled: the applicant must demonstrate (i) that the impugned Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings, and (ii) that an immediate resolution by the Appeals Chamber may materially advance the proceedings. The moving party must demonstrate that both requirements of Rule 73(B) are satisfied and, even then, certification to appeal must remain exceptional.²¹

9. The Chamber considers that the issue which Matthieu Ngirumpatse intends to submit to the Appeals Chamber is the subject of a motion pending before the Appeals Chamber following

¹⁸ Matthieu Ngirumpatse's Motion for Certification to Appeal the Decision of 1 September 2010, filed on 8 September 2010.

¹⁹ *Karemera et al.*, "Decision on Matthieu Ngirumpatse's Motion for Certification of the Decision of 1 September 2010", 30 September 2010.

²⁰ *Karemera et al.*, "Decision on Matthieu Ngirumpatse's Motions Relating to his Witnesses and Admission of Written Statements", 27 October 2010.

²¹ *Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Dorđević and Sreten Lukić*, Case No. IT-05-87-T, "Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coo's Expert Report", 30 August 2006; *Karemera et al.*, "Decision on Joseph Nzirorera's Application for Certification to Appeal Disclosure Decision on Witness ALG", 29 April 2009, para. 3; *Karemera et al.*, "Decision on Édouard Karemera's Application for Certification to Appeal the Decision Denying his Motion for Admission of an Expert Witness", 1 July 2009, para. 3; *Karemera et al.*, "Decision on the Request for Certification to Appeal the 'Decision on Remand Regarding Continuation of Trial'", 17 October 2009, para. 6; *Karemera et al.*, "Decision on Édouard Karemera's Motion for Certification to Appeal the Decision Relating to the Right to be Tried Without Undue Delay", 24 December 2009, para. 3.

the Chamber's 30 September 2010 Decision which granted Matthieu Ndirumpatse leave to appeal the sanction imposed on his Counsel.²² Consequently, the Chamber considers that Matthieu Ndirumpatse's request should not be entertained. Nevertheless, when the Appeals Chamber will decide on Matthieu Ndirumpatse's Motion, it will, if it need be, review the Chamber's 27 October 2010 Decision ordering the non-payment of fees and costs.

FOR THESE REASONS, THE CHAMBER

DENIES the Motion in its entirety.

Arusha, 25 November 2010

[Signed]
Dennis C. M. Byron
Presiding Judge

[Signed]
Gberdao Gustave Kam
Judge

[Signed]
Vagn Joensen
Judge

[Seal of the Tribunal]



²² *Karemera et al.*, "Decision on Matthieu Ndirumpatse's Motion for Certification of the 1 September 2010 Decision", 30 September 2010.