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Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

ICTR-98-44-AR73.19

21<sup>st</sup> March 2011

{1309/H – 1301/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:** 21 March 2011

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
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ÉDOUARD KAREMERA  
MATTHIEU NGIRUMPATSE

v.

ICTR Appeals Chamber  
Date: 21/March/11  
Action:  
Copied To: Concerned Judges

THE PROSECUTOR

Parties, Judicial Archives, Case No. ICTR-98-44-AR73.19  
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**DECISION ON MATTHIEU NGIRUMPATSE'S APPEAL AGAINST A  
SANCTION IMPOSED ON COUNSEL BY TRIAL CHAMBER'S DECISION  
OF 1 SEPTEMBER 2010**

Counsel for Matthieu Ngirumpatse

Ms. Chantal Hounkpatin  
Mr. Frédéric Weyl

Counsel for Édouard Karemera

Ms. Dior Diagne Mbaye  
Mr. Félix Sow

Office of the Prosecutor

Mr. Hassan Bubacar Jallow  
Mr. Don Webster  
Ms. Maria Wilson  
Mr. Takeh Sendze  
Ms. Sunkarie Ballah-Conteh

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 1994 and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively) is seised of an interlocutory appeal filed by Counsel for Matthieu Ngirumpatse (“Counsel” and “Ngirumpatse”, respectively) on 7 October 2010 (“Appeal”)<sup>1</sup> against a sanction imposed by a decision of Trial Chamber III of the Tribunal (“Trial Chamber”) rendered on 1 September 2010 (“Impugned Decision”).<sup>2</sup> The Prosecution filed its response on 14 October 2010.<sup>3</sup> Ngirumpatse did not reply.

### A. Background

2. On 17 September 2008, the Trial Chamber ordered, *inter alia*, Ngirumpatse to file his request for the admission of written statements under Rule 92*bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) no later than 1 October 2008.<sup>4</sup> Ngirumpatse filed a request for the admission of 19 written statements within the set time-limit.<sup>5</sup> After noting that the majority of these statements were not signed and that none of them was certified in accordance with Rule 92*bis*(B) of the Rules, on 15 July 2009, the Trial Chamber ordered Ngirumpatse to submit the signed versions of these written statements within two months of his receipt of its order.<sup>6</sup> Ngirumpatse filed signed versions of 18 of the 19 statements on 14 September 2009.<sup>7</sup> On 11 November 2009, the Trial Chamber admitted 14 of the statements submitted.<sup>8</sup>

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<sup>1</sup> Appeal Against the Sanction Imposed on Matthieu Ngirumpatse’s Counsel by Decision of 1 September 2010, 7 October 2010. The English translation of the original French version was filed on 23 November 2010.

<sup>2</sup> *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Decision on “*requête de Matthieu Ngirumpatse visant à l’admission de déclarations sur le fondement de l’article 92 bis du Règlement*”, 1 September 2010. The English translation of the original French version was filed on 14 December 2010.

<sup>3</sup> Prosecutor’s Response to « *Appel de la sanction imposée aux conseils de Matthieu Ngirumpatse par décision du 1<sup>er</sup> Septembre [sic] 2010* », 14 October 2010 (“Response”).

<sup>4</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Mathieu [sic] Ngirumpatse’s Motions for Reconsideration and Extension of Time-Limits for the Presentation of his Case, 17 September 2008 (“Decision of 17 September 2008”), Disposition, para. VI. The English translation of the original French version was filed on 6 November 2008.

<sup>5</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Motion by Mathieu [sic] Ngirumpatse for the Admission of Written Statements Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, with confidential annex, 1 October 2008 (“Motion of 1 October 2008”), paras. 19-37, p. 10, Annex. The English translation of the original French version was filed on 27 January 2009.

<sup>6</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Order Subsequent to Matthieu Ngirumpatse’s Motion for Admission of Statements Pursuant to Rule 92 *bis*, 15 July 2009, p. 2. The English translation of the original French version was filed on 21 December 2009.

<sup>7</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Compliance with Order of 15 July 2009 Pursuant to Matthieu Ngirumpatse’s Motion for Admission of Statements Based on Article 92 *bis* [sic] of the Rules, public with confidential and *ex parte* annex, 14 September 2009 (“Brief of 14 September 2009”) (the English translation of the original French version was filed on 11 January 2010). On 18 September 2009, the Trial Chamber directed the Registry to reclassify as confidential the *ex parte* annex containing the 18 signed statements. See *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Décision suite à la réponse du Procureur au mémoire de Matthieu Ngirumpatse du 14 septembre 2009*, 18 September 2009, Disposition, para. I. See also *The Prosecutor v.*

3. On 28 June 2010, Ngirumpatse requested the admission of 57 further written statements pursuant to Rule 92*bis* of the Rules.<sup>9</sup> In its Impugned Decision, the Trial Chamber admitted 20 of the 57 statements<sup>10</sup> and sanctioned Counsel under Rule 73(F) of the Rules by the non-payment of fees and costs associated with the Motion of 28 June 2010 and its related filings.<sup>11</sup>

4. On 30 September 2010, the Trial Chamber granted, in part, Ngirumpatse's application for certification to appeal the Impugned Decision with regard to the sanction imposed on Counsel and denied certification regarding the partial admission of the written statements.<sup>12</sup> With respect to the latter, the Trial Chamber authorised Ngirumpatse to resubmit, within ten days, those written statements which he considered material to the preparation of his defence and admissible under Rule 92*bis* of the Rules.<sup>13</sup>

5. In his Appeal, Ngirumpatse challenges the sanction imposed by the Trial Chamber on his Counsel and requests the Appeals Chamber to order the Trial Chamber to review the Impugned Decision.<sup>14</sup>

## **B. Submissions**

6. Ngirumpatse submits that the Impugned Decision is based on an incorrect interpretation of the governing law and on patently incorrect conclusions of fact, and that it constitutes an abuse of the Trial Chamber's discretion.<sup>15</sup> He contends that the Trial Chamber's sanction is arbitrary as Counsel were not given the opportunity to make any submissions before it was imposed.<sup>16</sup> Moreover, he claims that he did not provide any justification for failing to request the admission of the 57 written statements within the prescribed time-limit because "none was requested of him, and because he reasonably considered the case law of the Chamber itself."<sup>17</sup> Ngirumpatse explains that, given the pecuniary sanction imposed on the counsel of his co-accused, Joseph Nzirorera, for filing

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*Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Motion by Matthieu Ngirumpatse for the Admission of Statements Pursuant to Rule 92 *bis* of the Rules and for the Protection of Witnesses, 11 November 2009 ("Decision of 11 November 2009"), para. 2. The English translation of the original French version was filed on 22 September 2010.

<sup>8</sup> Decision of 11 November 2009, pp. 12, 13. The Trial Chamber found it appropriate to rule on the admissibility of one additional statement that was among the 19 statements submitted with the Motion of 1 October 2008 but not part of the 18 statements submitted with Ngirumpatse's Brief of 14 September 2009. See Decision of 11 November 2009, para. 34.

<sup>9</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Requête de Matthieu Ngirumpatse en admission de nouvelles déclarations écrites sur le fondement de l'article 92 bis du Règlement de procédure et de preuve*, with annexes, 28 June 2010 ("Motion of 28 June 2010"), Annexes.

<sup>10</sup> Impugned Decision, Disposition, paras. I, II, III.

<sup>11</sup> Impugned Decision, para. 3, Disposition, para. VII.

<sup>12</sup> *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Decision on Matthieu Ngirumpatse's Motion for Certification of the Decision of 1 September 2010, 30 September 2010 ("Certification Decision"), paras. 5, 6, Disposition, paras. I, II. The English translation of the original French version was filed on 1 March 2011.

<sup>13</sup> Certification Decision, para. 6, Disposition, para. III.

<sup>14</sup> Appeal, para. 44. See also Appeal, paras. 13-43.

<sup>15</sup> Appeal, para. 14.

<sup>16</sup> Appeal, para. 28.

statements in a piecemeal manner, and for the sake of judicial economy, he believed it most “reasonable” to group the written statements in order to apprise the Trial Chamber of their existence through a single motion rather than submitting several requests.<sup>18</sup> He also argues that he “reasonably inferred” from the Decision of 11 November 2009 that, until the commencement of the Defence case, he could vary his witness list so that witnesses could testify in written form, without seeking leave from the Trial Chamber.<sup>19</sup>

7. In addition, Ngirumpatse submits that the sanction imposed in the Impugned Decision is part of a series of warnings and sanctions issued by the Trial Chamber.<sup>20</sup> In Ngirumpatse’s view, the Trial Chamber’s use of sanctions is “unreasonable and even abusive.”<sup>21</sup> He asserts that the repetitive nature of the warnings and sanctions makes it impossible for his Counsel to mount a proper defence and that his right to a fair trial has therefore been violated.<sup>22</sup> He further argues that these warnings and sanctions compromise his Counsel’s obligations as members of the Paris Bar.<sup>23</sup>

8. Ngirumpatse further argues that the Trial Chamber based its decision to impose a sanction on incorrect conclusions of fact since all the statements submitted in his Motion of 28 June 2010 were signed and all of their authors were on his latest witness list.<sup>24</sup>

9. Finally, Ngirumpatse submits that his Motion of 28 June 2010 could not be abusive since: (i) the Trial Chamber found that it was in the interests of justice to examine it on the merits and granted it in part;<sup>25</sup> and (ii) it was supported by a provision of the Rules and was clearly necessary for his defence.<sup>26</sup>

10. The Prosecution responds that the Appeal should be dismissed in its entirety.<sup>27</sup> It submits that the discretionary power of the Trial Chamber to impose sanctions pursuant to Rule 73(F) of the

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<sup>17</sup> Appeal, para. 29 (emphasis omitted).

<sup>18</sup> Appeal, paras. 37-39.

<sup>19</sup> Appeal, para. 30, referring to, *inter alia*, Decision of 11 November 2009, para. 4. See also Appeal, para. 31.

<sup>20</sup> Appeal, paras. 18-20, referring to, *inter alia*, Impugned Decision; *The Prosecutor v. Edouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, *Décision suite à la requête en reconsidération de Matthieu Ngirumpatse contre la décision consolidée du 5 juillet 2010*, 23 August 2010 (“Decision of 23 August 2010”); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Consolidated Decision on the Various Filings by Matthieu Ngirumpatse under Rule 73 *ter* of the Rules and on Those of the Prosecutor, 5 July 2010 (“Decision of 5 July 2010”) (the English translation of the original French version was filed on 30 August 2010); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Décision consoliidée [sic] suite aux écritures de Matthieu Ngirumpatse du 25 septembre 2009 et à sa requête du 10 novembre 2009*, 4 December 2009; T. 23 August 2010. See also Appeal, paras. 17 (referring to T. 6, 7, 25 June 2010 (the Appeals Chamber notes that the Trial Chamber did not sit on 6 June 2010)), 23 (citing T. 25 June 2010 pp. 7, 8; T. 31 August 2010 pp. 47, 48; T. 1 September 2010 pp. 4, 45).

<sup>21</sup> Appeal, para. 25.

<sup>22</sup> *Idem*. See also Appeal, para. 18.

<sup>23</sup> Appeal, paras. 15, 16.

<sup>24</sup> Appeal, paras. 14, 40, 41.

<sup>25</sup> Appeal, para. 35.

<sup>26</sup> Appeal, para. 33, referring to *The Prosecutor v. Joseph Nzirorera et al.*, Case No. ICTR-98-44-I, Decision on the Defence Motion to Order the Government of Rwanda to Show Cause, 4 September 2003, p. 2.

Rules is not subject to appeal under the Statute of the Tribunal (“Statute”) or the Rules.<sup>28</sup> In the event that the Appeals Chamber considers the merits of the Appeal, the Prosecution contends that the Trial Chamber correctly exercised its discretion in issuing pecuniary sanctions on Counsel for abuse of process.<sup>29</sup> It submits that the Trial Chamber, faced with failures to comply with its orders and with abusive filings by Ngirumpatse, exercised its inherent power under Rule 73(F) of the Rules to ensure effective management of trial proceedings.<sup>30</sup>

11. The Prosecution further asserts that, since the process of a Rule 92*bis* application “is more tenuous” than a variation of a witness list pursuant to Rule 73*ter* of the Rules, Trial Chambers set deadlines and request justification for subsequent Rule 92*bis* applications.<sup>31</sup> In particular, it argues that the Decision of 11 November 2009 was not intended “to authorize a complete overhaul of a party’s witness list” because, otherwise, it would render void the main purpose of the provisions of Rule 73*ter* of the Rules, which intends “to facilitate the efficient management of the proceedings by ensuring that key materials are filed prior to the commencement of the Defence case.”<sup>32</sup>

### C. Standard of Review

12. This appeal raises the question of whether the Trial Chamber erred in denying fees to Counsel pursuant to Rule 73(F) of the Rules. This matter relates to the general conduct of trial proceedings and thus falls within the discretion of the Trial Chamber. In order to successfully challenge a discretionary decision, a party must demonstrate that the Trial Chamber has committed a discernible error resulting in prejudice to that party.<sup>33</sup> The Appeals Chamber will only overturn a Trial Chamber’s discretionary decision where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the Trial Chamber’s discretion.<sup>34</sup>

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<sup>27</sup> Response, paras. 3, 46.

<sup>28</sup> Response, paras. 3, 31, quoting *Édouard Karemera and Joseph Nzirorera v. The Prosecutor*, Case No. ICTR-98-44-AR73.4, Decision on Interlocutory Appeals Regarding Participation of *Ad Litem* Judges, 11 June 2004 (“*Karemera* Decision of 11 June 2004”); *Joseph Nzirorera v. The Prosecutor*, Case No. ICTR-98-44-AR73(F), Decision on Counsel’s Appeal from Rule 73(F) Decisions, 9 June 2004 (“*Karemera* Decision of 9 June 2004”).

<sup>29</sup> Response, paras. 3, 34-39.

<sup>30</sup> Response, paras. 28, 34, 36-39. The Prosecution lists occurrences which, in its view, exemplify how Ngirumpatse’s “halting compliance with the Chamber’s orders has been litigious and obstructive and [...] how his filings have been abusive of the trial process.” See Response, para. 39.

<sup>31</sup> Response, para. 42.

<sup>32</sup> Response, para. 41.

<sup>33</sup> *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR73.18, Decision on Joseph Nzirorera’s Appeal from Decision on Alleged Rule 66 Violation, 18 May 2010 (“*Karemera* Decision of 18 May 2010”), para. 11; *Gaspard Kanyarukiga v. The Prosecutor*, Case No. ICTR-02-78-AR73, Decision on Kanyarukiga’s Interlocutory Appeal of Decision on Disclosure and Return of Exculpatory Documents, 19 February 2010 (“*Kanyarukiga* Decision of 19 February 2010”), para. 9.

<sup>34</sup> *Karemera* Decision of 18 May 2010, para. 11; *Kanyarukiga* Decision of 19 February 2010, para. 9; *Édouard Karemera et al. v. The Prosecutor*, Case No. ICTR-98-44-AR75.15, Decision on Joseph Nzirorera’s Appeal Against a

## D. Discussion

### 1. Preliminary Matter

13. The Prosecution argues that the Appeal should be summarily dismissed for lack of jurisdiction. In the *Karemera* Decision of 5 May 2009, the Appeals Chamber stated that “there is no appeal from a decision to impose sanctions under Rule 73(F) of the Rules.”<sup>35</sup> The Appeals Chamber considers, however, that this statement of the law is unduly broad and should apply only in circumstances where a party seeks to appeal as of right.<sup>36</sup> This precedent should not be applicable to situations, as in this case, where the decision imposing sanctions was certified by the Trial Chamber. Therefore, to the extent that the *Karemera* Decision of 5 May 2009 restricted the consideration of certified decisions on sanctions under Rule 73(F) of the Rules,<sup>37</sup> the Appeals Chamber considers that there are cogent reasons to depart from this jurisprudence.

14. Accordingly, the Appeals Chamber considers that a decision to impose sanctions pursuant to Rule 73(F) of the Rules is subject to interlocutory appeal in accordance with Rule 73(B) of the Rules. The Appeal is therefore properly before the Appeals Chamber.

### 2. The Appeal

15. Rule 73(F) of the Rules prescribes that:

In addition to the sanctions envisaged by Rule 46, a Chamber may impose sanctions against Counsel if Counsel brings a motion, including a preliminary motion, that, in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof.

16. In the Impugned Decision, the Trial Chamber recalled that for the past two years Ngirumpatse has repeatedly ignored its orders regarding the preparation of his defence and stressed that he has already been sanctioned for such conduct.<sup>38</sup> It held that Ngirumpatse failed to provide

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Decision of Trial Chamber III Denying the Disclosure of a Copy of the Presiding Judge’s Written Assessment of a Member of the Prosecution Team, 5 May 2009 (“*Karemera* Decision of 5 May 2009”), para. 8.

<sup>35</sup> *Karemera* Decision of 5 May 2009, para. 21.

<sup>36</sup> Indeed, the decisions relied on by the Appeals Chamber for this proposition concerned appeals of right in situations where the decision imposing sanctions was not certified by the Trial Chamber. See *Karemera* Decision of 11 June 2004, p. 4 (“a decision to impose monetary sanctions on counsel for frivolous motions or abuse of process pursuant to Rule 73(F) of the Rules is not subject to appeal under the Statute of the [...] Tribunal or the Rules and [...] *in any event, the certification granted by the Trial Chamber in this case does not cover an appeal from the decision to impose such sanctions*”) (emphasis added); *Karemera* Decision of 9 June 2004, p. 3 (“there is no basis for granting a *right of appeal* in the present case”) (emphasis added).

<sup>37</sup> Notably, the Appeals Chamber in the *Karemera* Decision of 5 May 2009 ultimately reviewed and reversed the Trial Chamber’s decision to impose sanctions, albeit relying on an alternative jurisdictional basis. See *Karemera* Decision of 5 May 2009, paras. 21-23, citing *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras. 73, 74. The English translation of the original French version was filed on 16 May 2008.

<sup>38</sup> Impugned Decision, para. 3, referring to, *inter alia*, Decision of 5 July 2010; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Ordonnance relative au mémoire de Mathieu [sic] Ngirumpatse sur l’ordonnance du 25 juin lui prescrivant de préciser la liste de ses témoins*, 30 July 2008 (“Order of 30 July 2008”).

reasons for his inability to request the admission of the 57 written statements within the time-limit set in the Decision of 17 September 2008.<sup>39</sup> The Trial Chamber further noted that some of the written statements submitted bore signatures dating from August 2008 or in the course of the year 2009.<sup>40</sup> It then characterised the late filing of the Motion of 28 June 2010, almost two years after the set time-limit, as an abuse of process and ordered the Registry to withhold payment of Counsel's fees and costs related to this motion, his reply, and motion for extension of time pursuant to Rule 73(F) of the Rules.<sup>41</sup>

17. With regard to the opportunity for Counsel to present submissions in relation to the sanction imposed, the Appeals Chamber recalls that neither the Statute nor the Rules provide for Counsel to be heard before the imposition of sanctions pursuant to Rule 73(F) of the Rules.<sup>42</sup> The Appeals Chamber considers further that the power to sanction Counsel is integral to a Trial Chamber's power to regulate the proceedings before it, including the conduct of the parties. While Trial Chambers should exercise this power cautiously,<sup>43</sup> the Appeals Chamber observes that the Trial Chamber in the present case repeatedly reiterated that Ngirumpatse failed to fully comply with its orders relating to the preparation of his Defence case<sup>44</sup> and issued a warning to Counsel on three occasions prior to the issuance of the Impugned Decision.<sup>45</sup> The Motion of 28 June 2010 was a new request to admit an additional 57 written statements after a significant period of time following the time-limit imposed by the Trial Chamber in its Decision of 17 September 2008, and a few days

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<sup>39</sup> Impugned Decision, para. 3.

<sup>40</sup> Impugned Decision, para. 3.

<sup>41</sup> Impugned Decision, para. 3, Disposition, para. VII. *See also The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, *Demande de délai pour Matthieu Ngirumpatse pour déposer une réplique sur la réponse du Procureur sur la requête en admission de nouvelles déclarations écrites sur le fondement de l'article 92bis [sic] du RPP* » [sic], 16 July 2010. *See also*, Impugned Decision, para. 1. The Trial Chamber held that, in spite of the late filing, it was in the interest of justice to address the merits of the Motion of 28 June 2010. Impugned Decision, para. 3.

<sup>42</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR11bis, Decision on Motion for Reconsideration of Decision on Joseph Nzirorera's Appeal from Denial of a Request for Designation of a Trial Chamber to Consider Referral to a National Jurisdiction, 21 August 2007, p. 3.

<sup>43</sup> *See Karemera* Decision of 5 May 2009, para. 21; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on the Appellant's Request to Admit Additional Evidence Pursuant to Rule 115 of the Rules of Procedure and Evidence, 29 October 2008, para. 14; *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-2002-78-R11bis, Decision on Request to Admit Additional Evidence of 1 August 2008, 1 September 2008, para. 12; *Karemera* Decision of 11 June 2004, p. 4.

<sup>44</sup> Decision of 23 August 2010, Disposition, para. III; Decision of 5 July 2010, para. 5, Disposition, para. II; Decision of 17 September 2008, para. 1, Disposition, para. II; Order of 30 July 2008, pp. 5, 6, Disposition, para. I; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Order on Mathieu [sic] Ngirumpatse's Brief Following the 17 April 2008 Decision on the Presentation of the Defence Evidence, 25 June 2008, para. 10, Disposition, para. I (the English translation of the original French version was filed on 7 August 2008); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Commencement of the Defence Case, 17 April 2008, para. 8, Disposition, para. I (the English translation of the original French version was filed on 27 August 2008); *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Mathieu [sic] Ngirumpatse's Request for Extension of Time to File Rule 73 *ter* Materials, 2 April 2008, Disposition, para. II; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Reconsideration of the Decision of 27 February 2008 on the Resumption of Trial and Commencement of the Defence Case, 6 March 2008, Disposition, para. VIII. The English translation of the original French version was filed on 7 April 2008.

<sup>45</sup> Decision of 23 August 2010, Disposition, para. II; Decision of 5 July 2010, Disposition, para. IV; Order of 30 July 2008, Disposition, para. II.

before the initial scheduled date of 5 July 2010 for the beginning of Ngirumpatse's Defence case.<sup>46</sup> Therefore, it was reasonable for the Trial Chamber to find, in the context in which the Motion of 28 June 2010 was brought, that this new filing constituted an abuse of process.

18. It is within the discretion of a Trial Chamber to impose reasonable deadlines with respect to matters related to the preparation of a party's case to ensure a fair and expeditious trial.<sup>47</sup> The Trial Chamber clearly ordered Ngirumpatse to file his proposed statements under Rule 92*bis* of the Rules by 1 October 2008.<sup>48</sup> Although Rule 73*ter*(E) of the Rules allows for an accused to file a motion to vary its witness list "after the commencement of the Defence case", this provision plainly relates to witnesses whom a party intends to call,<sup>49</sup> not to statements under Rule 92*bis* of the Rules, which relate to proof of facts by means other than oral evidence. Accordingly, the Appeals Chamber is not convinced that the Rules or the Trial Chamber's case law, reasonably construed, envision the late submission.

19. In addition, Ngirumpatse has not demonstrated that the series of warnings and sanctions issued by the Trial Chamber is unreasonable or impedes the preparation of his defence. In this respect, Ngirumpatse only highlights several examples of warnings and makes no submissions demonstrating the impropriety of these warnings.<sup>50</sup> In this context, there is likewise no merit to Ngirumpatse's submission that the Trial Chamber's actions compromise his Counsel's obligations as members of the Paris Bar.<sup>51</sup>

20. The fact that the Trial Chamber granted partial relief to Ngirumpatse does not excuse his failure to comply with its deadline or render the sanctions imposed improper. In this respect, the Appeals Chamber observes that, in a separate order of 24 October 2008, the Trial Chamber explained the importance to the proper administration of justice of filing Rule 92*bis* statements in one submission absent good cause and raised the possibility of sanctions in the event of non-

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<sup>46</sup> See *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Scheduling Order, 10 May 2010, para. 2. After the issuance of a warning under Rule 46 of the Rules on 23 August 2010 for failing to comply with the Trial Chamber's order to open his Defence case, Ngirumpatse's case started on 24 August 2010. See T. 23 August 2010 p. 12; Opening Statement, T. 24 August 2010 pp. 11-21.

<sup>47</sup> See, e.g., *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006, para. 12; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR, 98-44-A73.6, Decision on Joseph Nzirorera's Interlocutory Appeal, 28 April 2006, paras. 7, 8; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, paras. 16, 18.

<sup>48</sup> Decision of 17 September 2008, para. 17.

<sup>49</sup> Compare Rule 73*ter*(B)(iii) of the Rules (*referring to the filing of "[a] list of witnesses the Defence intends to call"*), with Rule 73*ter*(E) of the Rules (*referring to requests to vary or reinstate the list referred to in Rule 73*ter*(B)(iii) of the Rules*).

<sup>50</sup> See Appeal, paras. 20, 23.

<sup>51</sup> Appeal, paras. 15, 16.



compliance.<sup>52</sup> Finally, it follows from the Impugned Decision that the main basis for imposing sanctions involved the delay in filing the submission without a showing of good cause.<sup>53</sup> Therefore any possible error the Trial Chamber made with respect to whether certain declarations were signed could not result in a miscarriage of justice.

21. Accordingly, in these circumstances, Ngirumpatse has not demonstrated that the decision to sanction his Counsel impeded the preparation of his case or was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.

#### **E. Disposition**

22. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Appeal.

Done in English and French, the English version being authoritative.

Done this 21<sup>st</sup> day of March 2011  
At The Hague,  
The Netherlands.



A handwritten signature in black ink, appearing to be "Patrick Robinson", written over a horizontal line.

Judge Patrick Robinson  
Presiding

[Seal of the Tribunal]

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<sup>52</sup> *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Order to Joseph Nzirorera to Reduce His Witness List, 24 October 2008, para. 11 (“Filings under rule 92bis require orders, and Nzirorera has already applied for 92bis orders on a statement by statement basis. The Chamber considers that this would unreasonably and unnecessarily increase the work of the Chamber and any party that may wish to respond. Consequently, it directs that applications for adducing statements under Rule 92bis be made in one application. The Chamber will direct the Registrar that fees for additional filings are denied unless cause is shown. It would also be consistent with the 73ter orders of the Chamber that such applications be made forthwith.”).

<sup>53</sup> Impugned Decision, para. 3.