



ICTR-98-44-T  
06-10-2011  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
(54258-54254)

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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 filed: 11 April 2011

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**THE PROSECUTOR**

v.

**EDOUARD KAREMERA &  
MATTHIEU NGIRUMPATSE**

**DECISION ON "REQUETE URGENTE POUR MATTHIEU NGIRUMPATSE AUX FINS  
D'ANNULATION DE LA POURSUITE ET AUX FINS DE MISE EN LIBERTE  
IMMEDIATE"**

Office of the Prosecutor:  
Don Webster  
Maria Wilson  
Takeh Sendze  
Sunkarie Ballah-Conteh  
Jean-Baptiste Nsanzimfura  
Richard Karegyesa

Counsel for the Accused:  
Dior Diagne Mbaye and Félix Sow for  
Édouard Karemera

Chantal Hounkpatin and Frédéric Weyl for  
Matthieu Ngirumpatse

CIII11-0086 (E)

Translation certified by LSS, ICTR

Decision on "Requête urgente pour Matthieu Ngirumpatse aux fins d'annulation de la poursuite et aux fins de mise en liberté immédiate"

## INTRODUCTION

1. By this motion, Matthieu Ngirumpatse requests the Chamber to dismiss of the case against him and to order his immediate release, on the grounds that the Prosecution undermined the integrity of the proceedings because the Office of the Prosecutor recruited from 28 December 2010 Mr Roach's former legal assistant (hereinafter referred to as "M.B."), Mr Roach having served as Counsel for Ngirumpatse from November 2003 to March 2005.<sup>1</sup> In the alternative, Ngirumpatse seeks the exclusion of submissions made by the Office of the Prosecutor from November 2003, when M.B. was recruited to work with Mr Roach.<sup>2</sup> Lastly, the Applicant requests the Chamber to take disciplinary measures against the Prosecution for thus obstructing the course of justice.<sup>3</sup> The Prosecution filed a response on 28 March 2011 seeking dismissal of the motion.<sup>4</sup> In this regard, it submitted two affidavits by M.B. and Mr Webster, Senior Trial Attorney in *Karemera et al.*, describing M.B.'s duties when he was legal assistant to Mr Roach, as well as his current duties since he started working in the Office of the Prosecutor. The Applicant replied on 1 April 2011.<sup>5</sup>

### *Preliminary issue*

2. In the alternative to the main request, the Applicant seeks reclassification of Annexes A to E of his motion as public documents.<sup>6</sup> In his reply, the Applicant requests the Chamber to render all the proceedings public, as the Prosecution had filed its response confidentially, forcing the Applicant to also file his reply confidentially.<sup>7</sup>

3. Owing to the principle enshrined in Article 19 of the Statute, requiring that the hearings be public, the Chamber believes that it is in the interests of proper administration of justice to grant this request and orders that the filings relating to Matthieu Ngirumpatse's urgent motion for dismissal of his case and his immediate release be reclassified as public documents. In order to ensure that Mr Roach's former legal assistant remains anonymous, the Chamber instructs the Registrar to replace the references to his names with the initials "M.B."

<sup>1</sup> *Requête urgente pour Matthieu Ngirumpatse aux fins d'annulation de la poursuite et de mise en liberté immédiate* ("Motion"), filed on 21 March 2011.

<sup>2</sup> Motion, paras. 26 to 29, 34. The Chamber notes that Ngirumpatse's motion first seeks dismissal of the filings from the Office of the Prosecutor "[since M.B.'s recruitment by the Office of the Prosecutor]" (para. 26), stressing however, that this is not a satisfactory solution because of "[the suspicion about his involvement from 2004 to 2005]" (para. 29). In the conclusion to his motion (para. 34), Ngirumpatse seeks "[dismissal of all the Prosecution's filings from the date when M. B. was recruited... in March 2004]". The Chamber therefore assumes that Ngirumpatse is actually referring to M.B.'s recruitment as Mr Roach's legal assistant in November 2003.

<sup>3</sup> Motion, paras. 33 and 34.

<sup>4</sup> Prosecutor's Response to Ngirumpatse's "*Requête urgente pour Matthieu Ngirumpatse aux fins d'annulation de la poursuite et de mise en liberté immédiate*" ("Response"), filed on 28 March 2011.

<sup>5</sup> *Réplique pour Matthieu Ngirumpatse à la réponse du procureur sur la requête urgente aux fins d'annulation de la poursuite et aux fins de mise en liberté immédiate* ("Reply"), filed on 1 April 2011.

<sup>6</sup> Motion, paras. 30 to 32.

<sup>7</sup> Reply, para. 4.

## DISCUSSION

4. The test applicable in determining the existence of a conflict of interests with regard to defence counsel who has previously worked with the Office of the Prosecutor is set out in the ICTY case law, in *Hadžihasanović*. In such an event, the Chamber must consider if there is a conflict of interests that affects, or is likely to affect, the integrity of the proceedings before the Chamber and if there is an undue advantage arising from the assignment of defence counsel in this case, which undermines the integrity of proceedings before the Chamber.<sup>8</sup> The Chamber's "reaction" is required when there is "a real possibility of a conflict of interests".<sup>9</sup> The party alleging such a conflict of interests bears the burden of proof. It must indeed convince and satisfy the Chamber that the former collaboration is such that there is a real possibility of a conflict of interests.<sup>10</sup>

5. The principles set out above are applicable in the instant case involving a lawyer by profession,<sup>11</sup> namely M.B., who worked for Ngirumpatse's Defence team, first as a legal assistant and then as general policy coordinator in the immediate office of the Prosecutor.

6. After consideration of the facts in this case, it emerges that M.B. worked with Mr Roach in Toronto as an international legal consultant.<sup>12</sup> He was subsequently assigned to Ngirumpatse's defence from November 2003 to March 2005, when Mr Roach resigned.<sup>13</sup> He was hired on 28 December 2010 to work in the immediate office of the Prosecutor, where he dealt exclusively with general policy issues and the Tribunal's judicial legacy, particularly the implementation of the completion strategy and the transition to the residual mechanism.<sup>14</sup>

7. The Chamber is satisfied that M.B. was aware of Ngirumpatse's defence strategy while he worked as Mr Roach's legal assistant. It is also likely that M.B. had access to confidential documents relating to potential testimonies and other types of evidence (hereinafter "confidential information"), although, it will be noted, he was at the same time required to adhere to a professional code of ethics forbidding him to reveal such information to anyone outside his team, and to the Prosecution in particular.

<sup>8</sup> *Prosecutor v. Hadžihasanović et al.*, "Decision on the Prosecution's Motion for the Review of the Registrar's Decision to Assign Mr Rodney Dixon as Co-Counsel to Accused Kubura", 26 March 2002, IT-01-47-PT, para. 30.

<sup>9</sup> *Ibid.*, para. 46.

<sup>10</sup> *Ibid.*, para. 4.

<sup>11</sup> Response, Annex A, point 8.

<sup>12</sup> *Idem.*

<sup>13</sup> The Chamber notes that the transcripts of the status conference of 24 March 2005 refer to Mr Roach's absence and that there is no mention of M.B.'s presence. DCDMS however indicated that Lead Counsel was to continue working until he was replaced, and that M.B.'s contract would run until June 2005. Since M.B. resigned on 21 March 2005 and the status conference took place on 25 March 2005, it is possible that DCDMS learned of the resignation of Mr Roach and that of his legal assistant only a few days later. For the Chamber, therefore, it is established that M.B.'s resignation actually took place on an unknown date in March, that is, before the new trial which started on 19 September 2005.

<sup>14</sup> Response, Annex A, point 19.

8. In this regard, the Applicant alleges that M.B. must have disclosed confidential information to the Office of the Prosecutor before he took up his appointment, thus breaching the professional code of ethics binding on him.<sup>15</sup> However, there are no concrete facts to support the Applicant's allegation. Consequently, regarding the period prior to 28 December 2010, the date on which M.B. was hired, the Chamber finds Ngirumpatse's motion unfounded and frivolous, and therefore denies it.

9. Regarding the period after 28 December 2010, the Chamber recalls, for the record, that the Prosecution closed its case on 4 December 2007. The presentation of Ngirumpatse's case started on 25 August 2010 and ended on 18 February 2011. The Prosecution did not call additional witnesses to rebut the Defence witnesses' testimonies. Since 28 December 2010, the Applicant's Defence has called three witnesses to testify, including the Accused himself and his daughter. However, the Chamber notes that the Applicant did not produce any evidence to show that the Prosecution used confidential information in the cross-examination of the three witnesses who testified in January and February 2011.

10. On the contrary, the Applicant alleges that M.B. used confidential information because his name was on the Registry's mailing list for documents relating to the case.<sup>16</sup> In this regard, the Chamber notes that, as a matter of practice, the Registry's mailing list includes not only the lawyers involved in the case, but also other persons working with the Chambers, the Registry and the Office of the Prosecutor, who have nothing to do with the trial in question but who, however, play an administrative role. Consequently, the Chamber is satisfied that M.B.'s current duties in the immediate office of the Prosecutor are a plausible explanation why his name appears on such mailing lists.

11. The Applicant further argues that the confidential information from M.B. was supposedly transmitted to the Prosecution Trial Attorney in charge of the *Karemera et al.* case, given that the Office of the Prosecutor is one and indivisible.<sup>17</sup> The Chamber considers this argument as inoperative. The principle that the Office of the Prosecutor is one and indivisible applies to the Prosecution's obligations in matters relating to disclosure of evidence under Rules 66 to 68 of the Rules.

12. In view of the foregoing, the Chamber finds that, in the instant case, there is no real possibility of a conflict of interests that affects, or is likely to affect, the integrity of the proceedings, since there is no undue advantage arising from M.B.'s recruitment in the immediate office of the Prosecutor that is prejudicial to the Applicant.

<sup>15</sup> Motion, paras. 16 and 19.

<sup>16</sup> Motion, para. 20.

<sup>17</sup> Motion, para. 20; Reply, para. 27.

**FOR THESE REASONS, THE CHAMBER**

- I. PARTLY GRANTS** Mathieu Ngirumpatse's motion and **ORDERS** that filings relating to this case be classified as public documents;
- II. DIRECTS** the Registrar to replace references to the name of Mr Roach's former legal assistant with "M.B.",
- III. DENIES** Mathieu Ngirumpatse's motion in all other respects.

Arusha, 11 April 2011, done in French

[Signed]  
Dennis C. M. Byron,  
Presiding Judge

[Signed]  
Gberdao Gustave Kam  
Judge

[Signed]  
Vagn Joensen  
Judge

[Seal of the Tribunal]

