



Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda

53/H

S.A

ICTR-98-44-A  
17<sup>th</sup> February 2012  
{53/H – 48/H}

**IN THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Pre-Appeal Judge  
**Registrar:** Mr. Adama Dieng  
**Decision of:** 17 February 2012

**ÉDOUARD KAREMERA  
MATTHIEU NGIRUMPATSE**

v.

**THE PROSECUTOR**

*Case No. ICTR-98-44-A*

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**DECISION ON MOTIONS FOR EXTENSION OF TIME FOR THE FILING OF APPEAL  
SUBMISSIONS**

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**Counsel for Édouard Karemera**

Ms. Dior Diagne Mbaye  
Mr. Moussa Félix Sow

**Counsel for Matthieu Ndirumpatse**

Mr. Frédéric Weyl  
Ms. Chantal Hounkpatin

**Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. James J. Arguin  
Mr. George W. Mugwanya  
Mr. Ousman Jammeh  
Ms. Memory Maposa

**ICTR Appeals Chamber**

Date: 17<sup>th</sup> February 2012  
Action: SHARIFAH ADONG  
Copied To: Concerned Judges  
S.L.Os, L.Os, A.L.Os, parties  
C.M.S. L.S.S. Sharifah

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
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NAME / NOM: SHARIFAH ADONG

SIGNATURE: Sharifah DATE: 17/02/2012

1. I, THEODOR MERON, Presiding Judge of 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 and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively) and Pre-Appeal Judge in this case,<sup>1</sup> am seised of a motion filed by Mr. Édouard Karemera for an extension of time to file his notice of appeal<sup>2</sup> and a motion filed by Mr. Matthieu Ndirumpatse for an extension of time to file his notice of appeal and his Appellant's brief.<sup>3</sup> The Prosecution has not yet responded to either motion.<sup>4</sup>

#### A. Procedural Background

2. On 21 December 2011, Trial Chamber III of the Tribunal ("Trial Chamber") convicted Mr. Karemera and Mr. Ndirumpatse of direct and public incitement to commit genocide and genocide.<sup>5</sup> The Trial Chamber also convicted Mr. Karemera and Mr. Ndirumpatse of extermination and rape as crimes against humanity, and of killing and causing violence to health and well-being as serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II.<sup>6</sup> The Trial Chamber sentenced each of them to life imprisonment.<sup>7</sup>

3. On 27 January 2012, I dismissed motions filed by Mr. Karemera and Mr. Ndirumpatse seeking an extension of time to file their respective notices of appeal on the ground that the requests, which had been submitted before the issuance of a written trial judgement, were premature.<sup>8</sup>

4. The written judgement was filed in English on 2 February 2012.<sup>9</sup>

<sup>1</sup> Order Assigning a Pre-Appeal Judge, 27 January 2012.

<sup>2</sup> *Requête aux fins de prorogation de délai en vue de former appel du Jugement rendu le 21 décembre 2011 par la Chambre III*, 10 February 2012 ("Karemera Motion").

<sup>3</sup> *Requête urgente aux fins d'extension de délais pour le dépôt de l'acte d'appel et du mémoire d'appel contre le jugement et la sentence du 21 décembre 2011*, 14 February 2012 ("Ndirumpatse Motion").

<sup>4</sup> I consider that it is in the interest of justice to rule on the motions without awaiting the response of the Prosecution. In so doing, I am satisfied that the Prosecution does not suffer any prejudice.

<sup>5</sup> T. 21 December 2011 p. 15; *Édouard Karemera and Matthieu Ndirumpatse v. The Prosecutor*, Case No. ICTR-98-44-T, Judgement and Sentence, 2 February 2012 ("Trial Judgement"), paras. 1714-1716.

<sup>6</sup> T. 21 December 2011 p. 15; Trial Judgement, paras. 1714-1716.

<sup>7</sup> T. 21 December 2011 p. 15; Trial Judgement, paras. 1762, 1763.

<sup>8</sup> Decision on Motions for Extension of Time for the Filing of the Notice of Appeal, 27 January 2012, Registry pagination ("r. p.") 25/H.

<sup>9</sup> The French translation of the Trial Judgement has not yet been filed.

## **B. Applicable Law**

5. Rule 116(A) of the Tribunal's Rules of Procedure and Evidence ("Rules") allows for the extension of time of any deadline on a showing of good cause. Rule 116(B) of the Rules provides that the requirement for good cause is satisfied "[w]here the ability of the accused to make full answer and Defence depends on the availability of a decision in an official language other than that in which it was originally issued".

6. Pursuant to Rule 108 of the Rules, the notice of appeal must be filed not more than 30 days from the date on which the judgement was pronounced. The Appeals Chamber has held that the time limit to file the notice of appeal runs from the date of the filing of the written trial judgement.<sup>10</sup> Under Rule 111 of the Rules, the parties' Appellant's briefs shall be filed within 75 days of the filing of the notice of appeal.<sup>11</sup>

7. The filing of a notice of appeal marks the commencement of the appeal proceedings in a case, and, since the time limits for the filing of the subsequent briefs are calculated from the date on which the notice of appeal is filed, any delay at such an early stage will affect subsequent filings.<sup>12</sup> In accordance with the practice of the Tribunal, Rule 116(B) of the Rules does not provide a basis for an extension of time for the filing of a notice of appeal where the convicted person's counsel can work in the language in which the trial judgement was pronounced.<sup>13</sup> This provision may, however, provide a basis for an extension of time, upon request, for the filing of the convicted

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<sup>10</sup> *The Prosecutor v. Ildephonse Hategekimana*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Second Motion for Extension of Time for the Filing of the Notice of Appeal, 28 February 2011, para. 2; *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-A, Decision on Yussuf Munyakazi's Motion for an Extension of Time for the Filing of the Notice of Appeal, 22 July 2010 ("*Munyakazi* Appeal Decision of 22 July 2010"), para. 4; *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-A, Decision on the Prosecution's Motion to Dismiss Ephrem Setako's Notice of Appeal, 2 July 2010, para. 12.

<sup>11</sup> Where limited to sentencing, the Appellant's brief shall be filed within 30 days of the filing of the notice of appeal. See Rule 111(A) of the Rules.

<sup>12</sup> See, e.g., *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for an Extension of Time for the Filing of Notice of Appeal, 20 July 2009 ("*Kalimanzira* Appeal Decision of 20 July 2009"), para. 5; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-A, Decision on Anatole Nsengiyumva's Motion for Extension of Time for Filing Appeal Submissions, 2 March 2009 ("*Bagosora et al.* Appeal Decision of 2 March 2009"), p. 4; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Decision on François Karera's Motion for Extension of Time for Filing the Notice of Appeal, 21 December 2007 ("*Karera* Appeal Decision of 21 December 2007"), r. p. 10/H.

<sup>13</sup> See, e.g., *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Notice of Appeal and Brief in Reply, 22 September 2009 ("*Renzaho* Appeal Decision of 22 September 2009"), paras. 4, 5; *Kalimanzira* Appeal Decision of 20 July 2009, paras. 5, 6; *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Decision on Callixte Kalimanzira's Motion for Leave to File an Amended Notice of Appeal and for an Extension of Time for the Filing of his Appellant's Brief, 31 August 2009, para. 5.

person's Appellant's brief pending the translation of the trial judgement into a working language of the Tribunal which he understands.<sup>14</sup>

### C. Discussion

#### 1. Ngirumpatse Motion

8. Mr. Ngirumpatse requests a 15-day extension of time to file his notice of appeal and a 30-day extension of time for the filing of his Appellant's brief.<sup>15</sup> He submits that he and his Counsel will endeavour to work on the basis of the English version of the Trial Judgement, although in doing so they will be handicapped and will need additional time, as they will be working in a language that is not their native tongue and of which they do not have full command.<sup>16</sup> Mr. Ngirumpatse also contends that the trial record is particularly complex and voluminous, and that the complexity, scope, and nature of alleged errors in the Trial Judgement are such that it is not reasonably possible to prepare the appeal submissions in the time provided by the Rules.<sup>17</sup> He asserts that these factors, taken together, demonstrate good cause to grant the requested extensions of time pursuant to Rule 116 of the Rules.<sup>18</sup>

9. I note the size and complexity of the trial record in this case, which includes the testimony of 153 witnesses, the admission of 114 witness statements under Rule 92*bis* of the Rules, more than 1,400 exhibits, and nearly 900 written decisions.<sup>19</sup> I further note the number of discrete incidents and occurrences underlying the convictions in the Trial Judgement.<sup>20</sup> Accordingly, I consider that the size and complexity of the trial record and the complexity of the Trial Judgement constitute good cause for a limited extension of 15 days for the filing of Mr. Ngirumpatse's notice of appeal and a similarly limited extension of 30 days for the filing of Mr. Ngirumpatse's Appellant's brief.

#### 2. Karemera Motion

10. Mr. Karemera requests a 30-day extension of time to file his notice of appeal from the filing of the French translation of the Trial Judgement.<sup>21</sup> He submits that both he and his Counsel, whose

<sup>14</sup> See, e.g., *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-A, Decision on Ephrem Setako's Motion for Extension of Time for the Filing of Appellant's Brief, 2 July 2010, para. 5; *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-A, Decision on Tharcisse Renzaho's Motion for Extension of Time for the Filing of Appellant's Brief, 21 October 2009, para. 4; *Renzaho* Appeal Decision of 22 September 2009, para. 4.

<sup>15</sup> Ngirumpatse Motion, para. 19, p. 5.

<sup>16</sup> Ngirumpatse Motion, paras. 9, 10.

<sup>17</sup> See Ngirumpatse Motion, paras. 12-15.

<sup>18</sup> See Ngirumpatse Motion, paras. 16-19.

<sup>19</sup> See, e.g., Trial Judgement, para. 38. The Trial Chamber considered that this case "is [...] nearly two times the size of the *Nahimana et al.* case, nearly equals the *Bagosora et al.* case in terms of trial days and exhibits, and *triples* the latter in the number of written decisions issued". See Trial Judgement, para. 40 (internal citation omitted).

<sup>20</sup> See, e.g., Trial Judgement, paras. 1575-1706.

<sup>21</sup> Karemera Motion, para. 17. See also Karemera Motion, para. 9.

official language is French, have need for a French version of the Trial Judgement in order to prepare a notice of appeal.<sup>22</sup> He adds that, however good their intentions, his Counsel's limited knowledge of English will not allow them to conduct a serious analysis of the questions of fact and law which may be the subject of his appeal, underscoring the size and complexity of the case.<sup>23</sup> Mr. Karemera further submits that the right of an accused to a decision in a language he understands is guaranteed by Article 20(4)(a) of the Statute of the Tribunal and Rule 3 of the Rules.<sup>24</sup> He contends that the unavailability of the French version of the Trial Judgement constitutes just cause for an extension of time pursuant to Rule 116 of the Rules.<sup>25</sup>

11. Counsel for Mr. Karemera have indicated that they have previously worked in English.<sup>26</sup> They are therefore able to discuss the contents of the Trial Judgement as well as any possible grounds of appeal with Mr. Karemera. Furthermore, the determination of potential grounds of appeal falls primarily within the purview of counsel and, if application is made after the Trial Judgement becomes available in French and good cause is shown, leave may be granted to vary the grounds of appeal pursuant to Rule 108 of the Rules.<sup>27</sup> Accordingly, in the present circumstances, the fact that the Trial Judgement has not yet been translated into French does not amount to good cause to extend the time for filing the notice of appeal.<sup>28</sup>

12. I consider, however, that the size and complexity of the trial record in this case and the complexity of the Trial Judgement constitute good cause for a limited extension of time for the filing of Mr. Karemera's notice of appeal, and further consider it appropriate to grant Mr. Karemera the same extension of time for the filing of his notice of appeal as that afforded to Mr. Ngirumpatse.

<sup>22</sup> Karemera Motion, para. 10. *See also* Karemera Motion, para. 8.

<sup>23</sup> Karemera Motion, paras. 4, 11 (underscoring that, *inter alia*, 153 witnesses were heard at trial, there were 114 witness statements, 1,800 exhibits were admitted, and 897 decisions were rendered).

<sup>24</sup> Karemera Motion, para. 12.

<sup>25</sup> Karemera Motion, para. 14. *See also* Karemera Motion, paras. 13, 15, 16.

<sup>26</sup> Form IL 2 for Dior Diagne, dated 10 January 2012; *Formulaire* IL 2 for Papa Moussa Félix Sow, dated 11 March 2003.

<sup>27</sup> *See, e.g., Dominique Ntawukulilyayo v. The Prosecutor*, Case No. ICTR-05-82-A, Decision on Dominique Ntawukulilyayo's Motion for Extensions of Time for Filing Appeal Submissions, 24 August 2010, para. 7; *Munyakazi* Appeal Decision of 22 July 2010, para. 6; *Renzaho* Appeal Decision of 22 September 2009, para. 5; *Kalimanzira* Appeal Decision of 20 July 2009, para. 6; *Bagosora et al.* Appeal Decision of 2 March 2009, p. 5; *Karera* Appeal Decision of 21 December 2007, r. p. 9/H.

<sup>28</sup> *Compare Augustin Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Decision on Ndindiliyimana's Request for Extension of Time to File his Appellant's Brief, 5 August 2011, p. 1 (considering that good cause existed to grant an extension of time for the filing of the appellant's brief to allow the appellant to read the trial judgement in a language he understands and consult with his counsel before the appellant's brief was filed); *Jean Uwinkindi v. The Prosecutor*, Case No. ICTR-01-75-AR11bis, Decision on Request for Translation and Extension of Time, 14 July 2011, paras. 4, 5 (same). *Compare also* *Idephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Idephonse Hategekimana's Second Motion for an Extension of Time to File his Appellant's Brief, 20 May 2011, para. 7.

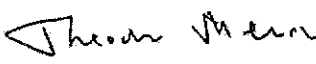
**D. Disposition**

13. For the foregoing reasons, the Karemera Motion is **GRANTED**, in part, and the Ngirumpatse Motion is **GRANTED**. Mr. Karemera and Mr. Ngirumpatse are ordered to file their notices of appeal, if any, by Monday, 19 March 2012,<sup>29</sup> and Mr. Ngirumpatse is further ordered to file his Appellant's brief, if any, by Monday, 2 July 2012.

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

Done this 17th day of February 2012,  
At The Hague,  
The Netherlands.



  
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Judge Theodor Meron  
Pre-Appeal Judge

**[Seal of the Tribunal]**

<sup>29</sup> See Rule 7ter(B) of the Rules.