



UNITED NATIONS
NATIONS UNIES

ICTR-01-67-R11bis
2-2-2012
(2109-2106)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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HM

OR: ENG

**REFERRAL PROCEEDINGS
PURSUANT TO RILE 11bis**

Before Judges: Khalida Rachid Khan, Presiding
Vagn Joensen
Gberdao Gustav Kam

Registrar: Adama Dieng

Date: 2 February 2012

JUDICIAL RECORDS/ARCHIVES
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THE PROSECUTOR

v.

Fulgence KAYISHEMA

Case No. ICTR-01-67-R11bis

**DECISION ON DUTY COUNSEL'S REQUEST FOR EXTENSION OF TIME TO
FILE HER RESPONSE TO THE PROSECUTION'S REFERRAL APPLICATION**

Rules 11bis and 54 of the Rules of Procedure and Evidence

For the Prosecution:
Hassan Bubacar Jallow
Richard Karegyesa

For the Fugitive Accused:
Joaquine Antionette De-Mello (Duty Counsel)

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I. INTRODUCTION

1. On 5 August 2011, the Registrar appointed Ms Joaquine Antionette De-Mello as a Duty Counsel in this case to represent the interests of the fugitive Accused Fulgence Kayishema.¹
2. On 27 December 2011, this Referral Chamber directed the Duty Counsel to file, no later than 1 February 2012, her Response to the Prosecution's Motion for the transfer of this case to Rwanda for trial.²
3. On 1 February 2012, instead of filing her anticipated Response, the Duty Counsel filed an application ("Application") seeking a further extension of two months to do so.³ The Duty Counsel cites the following reasons for the extension: 1) the case is complex, contains "extensive documents", and more information and investigation is required before filing the Response;⁴ 2) the Accused is implicated in crimes with other individuals who have been prosecuted before this Tribunal and the Duty Counsel would need to read those cases;⁵ 3) the Prosecution must be directed to disclose statements of witnesses who deposed in those cases before this Tribunal;⁶ 4) the Registrar must appoint a Defence investigator to collect witness testimony;⁷ 5) the Prosecution has not made a complete disclosure of documents.⁸
4. The Prosecution opposes the Application but submits that "in light of the circumstances of this case and the importance of the Duty Counsel's submissions to the Referral Chambers consideration of the [Prosecution Motion] the Duty Counsel may be granted a week's time to file her response."⁹

¹ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Assignment as Lead Counsel to Fugitive Accused Fulgence Kayishema, 5 August 2011 ("Letter of Assignment").

² *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Scheduling Order for the Resumption of the Referral Proceedings, 27 December 2011.

³ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Response of the Defence to the Scheduling Order Dated 27 December 2011 Concerning the Resumption of the Referral Proceedings, 1 February 2012 ("Application").

⁴ Application, para. 1.

⁵ Application, para. 2.

⁶ Application, para. 3.

⁷ Application, para. 4.

⁸ Application, para. 5.

⁹ *The Prosecutor v. Fulgence Kayishema*, Case No. ICTR-01-67-R11bis, Prosecution's Opposition to the Request for Extension of Time, 1 February 2012, para. 8.

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II. DISCUSSION

5. The Duty Counsel's Application is misconceived on all its five grounds.
6. The Duty Counsel was appointed on 5 August 2011 and has been working on the case, at least, since 15 August 2011 when, in response to her appointment, she informed the Registry, the Prosecution and the Chambers: "Odette, This is noted & thank you. Joaquine".¹⁰ All the pleadings, including the *amici curiae* briefs, filed in these proceedings were available to her as of that date. Therefore, the Duty Counsel has had more than five months to study the available documentation.
7. In addition, the Duty Counsel has been assigned to protect the interests of the Accused *solely* for these referral proceedings. This is apparent from her letter of assignment which, *inter alia*, states: "[Y]our assignment only relates to and is solely for the purposes of the referral of the indictment to another court under Rule 11 bis [...]. We do not anticipate any investigative work. Much of the work, therefore, will involve reading, drafting and research."¹¹ As referral proceedings are not trial *per se*, this Referral Chamber is not currently concerned with the merits of the case against the Accused. That can only happen before this Tribunal if he is arrested or before a Rwandan court if this case is transferred. Accordingly, the Duty Counsel's requests for disclosure and analysis of documents from other cases and for the appointment of a Defence investigator to take evidence are unfounded.
8. The Referral Chamber is accordingly not minded to grant the extension sought by the Duty Counsel. The Application is accordingly rejected. However, as the Application was filed on the day the Response was due, the Referral Chamber considers it in the interest of justice to, *proprio motu*, grant a short period of time to allow the Duty Counsel to submit her Response.
9. The Referral Chamber also notes that the Duty Counsel has filed the Application as a confidential document. As a rule, filings before this Tribunal are public unless witness protection or other reasons justify their confidentiality. The Referral Chamber sees no reason for retaining the confidential status of the Application and orders its re-circulation as a public document.

¹⁰ Email of the Duty Counsel to the Registry, the Prosecution and the Chambers, 15 August 2011 (1101 hrs).

¹¹ Letter of Assignment, p. 1.

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FOR THE ABOVE REASONS, THE REFERRAL CHAMBER

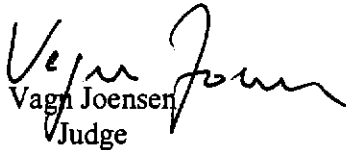
REJECTS the Application in its entirety;

DIRECTS the Registry to lift the confidential status of the Application and re-circulate it forthwith as a public document;

GRANTS, *proprio motu*, the Duty Counsel time until 10 February 2012 to file her consolidated Response to the Prosecution Motion and the *Amici* Briefs;

DIRECTS the Prosecution to file its Reply, if any, to the Duty Counsel's consolidated Response by 17 February 2012.

Arusha, 2 February 2012, done in English.


Vagn Joensen
Judge

Designated under Rule 73(A)

[Seal of the Tribunal]

