

ICTR-98-44-T  
23-6-2009  
(46314-46311)

46314  
HM



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

**Before Judges:** Dennis C. M. Byron, Presiding  
Gberdao Gustave Kam  
Vagn Joensen

**Registrar:** Adama Dieng

**Date:** 23 June 2009

THE PROSECUTION

v.

Édouard KAREMERA  
Matthieu NGIRUMPATSE  
Joseph NZIRORERA  
*Case No. ICTR-98-44-T*

JUDICIAL RECORDS ARCHIVE  
RECEIVED

2009 JUN 23 P 4: 48

ORDER CONCERNING MEDIAL EXAMINATION OF MATTHIEU  
NGIRUMPATSE

*Rules 54 and 74bis of the Rules of Procedure and Evidence*

**Office of the Prosecution:**  
Don Webster  
Saidou N'Dow  
Arif Virani  
Sunkarie Ballah-Conteh  
Eric Husketh  
Takeh Sendze

**Defence Counsel for Édouard Karemera**  
Dior Diagne Mbaye and Félix Sow

**Defence Counsel for Matthieu Ngirumpatse**

Chantal Hounkpatin and Frédéric Weyl

**Defence Counsel for Joseph Nzirorera**  
Peter Robinson and Patrick Nimy Mayidika Ngimbi

## INTRODUCTION

1. On 3 March 2009, the Chamber granted a Prosecution motion to sever Matthieu Ngirumpatse from this case.<sup>1</sup> On 19 June 2009, the Appeals Chamber reversed the Chamber's decision to sever Ngirumpatse and remanded the matter to the Chamber for further consideration.<sup>2</sup>
2. The Appeals Chamber found that Trial Chamber reached its conclusions on the prejudice which would be caused to the co-Accused, Édouard Karemera and Joseph Nzirorera, as a result of further delays occasioned by Ngirumpatse's illness without having assessed all relevant factors. In particular, the Appeals Chamber found that the Chamber should not have made its decision on severance by relying exclusively on a medical assessment that was provisional, lacking in detail, and disputed by the parties and in circumstances where it had no specific information concerning the nature of Ngirumpatse's medical problem.<sup>3</sup>
3. Rather than commencing the defence of Joseph Nzirorera on 23 June 2009 as previously scheduled, the Chamber invited the Parties and the Registrar to make oral submissions concerning the Severance Appeal. The Chamber requested the parties to address certain particular issues, including:
  - i. the disclosure of information concerning the nature of Matthieu Ngirumpatse's medical problem; and,
  - ii. the need for, and modalities of, soliciting an alternative medical assessment of Matthieu Ngirumpatse's medical condition and prognosis.
4. The Defence for Matthieu Ngirumpatse advised the Chamber that Ngirumpatse would not consent to the proceedings continuing in his absence. All parties and the Deputy Registrar agreed on the need for additional medical information concerning Matthieu Ngirumpatse's state of health.<sup>4</sup>

<sup>1</sup> *Prosecutor v. Édouard Karemera, Matthieu Ngirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T ("Karemera et al."), Decision on Continuation of Trial, 3 March 2009.

<sup>2</sup> *Karemera et al.*, Decision on Appeal concerning the Severance of Matthieu Ngirumpatse, 19 June 2009 ("Severance Appeal").

<sup>3</sup> *Ibid.*, para. 22.

<sup>4</sup> T. 23 June 2009.

### DELIBERATIONS

5. Rule 74bis of the Rules provides that a Chamber may, *proprio muto* or at the request of a party, order a medical examination of an accused.
6. Having carefully considered the submissions of the parties<sup>5</sup> and the Registrar, as well as the guidance provided by the Appeals Chamber in the Severance Appeal, the Chamber finds that additional information regarding Matthieu Ngirumpatse's state of health, prognosis and ability to participate in the trial is essential to a determination of the fair and expeditious continuation of the proceedings.
7. The Chamber further considers that a report from the Chief Medical Officer, as well as from an independent medical expert with no prior involvement in the case, is necessary to gain a full appreciation of the state of Matthieu Ngirumpatse's health. The Chamber appreciates, however, the need to protect Ngirumpatse's privacy to the fullest extent possible, while also ensuring the integrity of the proceedings and the right of the parties to be informed. Consequently, the Chamber orders that the medical reports shall be delivered to the Chamber on an *ex parte* basis, after receipt of which the Chamber will consider which portions, if any, shall be disclosed to the parties.

### FOR THE FOREGOING REASONS, THE CHAMBER


- I. **REQUESTS** the Registrar to request the Chief Medical Officer, Dr. Épée Hernandez, to prepare a report, with the assistance of expert medical advice as needed, on the following matters:
  - a. Matthieu Ngirumpatse's state of health, including details regarding his medical condition;
  - b. Matthieu Ngirumpatse's prognosis;
  - c. Matthieu Ngirumpatse's current fitness to participate in the proceedings, including in particular details regarding his ability to follow the proceedings, and for how many hours and days per week;

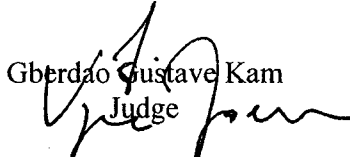
---

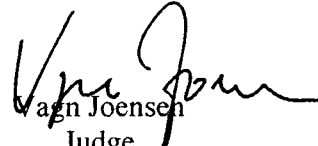
<sup>5</sup> The Chamber notes that Joseph Nzirorera filed written submissions on the matter: Joseph Nzirorera's Memorandum Concerning Ngirumpatse Health Issues, filed 22 June 2009.

- d. Whether Matthieu Ngirumpatse will be able to personally participate in the proceedings in the future, and if so, when and for how many hours and days per week; and,
  - e. The basis upon which the conclusions made in the report were arrived at, in particular what materials were consulted and whether opinions of other physicians were taken into account. Any written medical opinions consulted should be attached to the medical report;
- II. **REQUESTS** the Chief Medical Officer to deliver the medical report to the Chamber, on a confidential and *ex parte* basis, by 3 July 2009;
- III. **REQUESTS** the Registrar to recommend to the Chamber an independent medical expert with no prior involvement in the case to prepare a report concerning Matthieu Ngirumpatse's state of health and prognosis, or to make submissions on the matter, by 1 July 2009;
- IV. **FINDS** that the proceedings shall be stayed until the receipt of medical reports from both the Chief Medical Officer and the independent medical expert, at which time the Chamber shall take a decision on the continuation of the proceedings.

Arusha, 23 June 2009, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]





## TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

**COURT MANAGEMENT SECTION**  
(Art. 27 of the Directive for the Registry)

### I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

<b>To:</b>	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input type="checkbox"/> Trial Chamber II R. N. Kouambo	<input checked="" type="checkbox"/> Trial Chamber III C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / Arusha F. A. Talon
	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input type="checkbox"/> Deputy Chief, CMS M. Diop	<input type="checkbox"/> Chief, JPU, CMS M. Diop	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison K. K. A. Afandé
<b>From:</b>	<input checked="" type="checkbox"/> ChamberTC3 Katherine Cornett (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
<b>Case Name:</b>	The Prosecutor vs. <b>Edouard Karemera et al.</b>		<b>Case Number:</b> ICTR-98-44	
<b>Dates:</b>	Transmitted: <b>23 June 2009</b>		Document's date: <b>23 June 2009</b>	
<b>No. of Pages:</b>	<b>4</b>	<b>Original Language:</b> <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda		
<b>Title of Document:</b>	<b>Order Concerning Medical Examination of Matthieu Ngirumpatse</b>			
<b>Classification Level:</b>		<b>TRIM Document Type:</b>		
<input type="checkbox"/> Strictly Confidential / Under Seal		<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Confidential		<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input checked="" type="checkbox"/> Public		<input type="checkbox"/> Disclosure	<input checked="" type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
		<input type="checkbox"/> Judgement	<input type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
		<input type="checkbox"/> Submission from non-parties		
		<input type="checkbox"/> Submission from parties		
		<input type="checkbox"/> Accused particulars		

### II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

**CMS SHALL** take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English  French  Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party hereby submits **BOTH** the original and the translated version for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

**CMS SHALL NOT** take any action regarding translation.

Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

English  French  Kinyarwanda

**KINDLY FILL IN THE BOXES BELOW**

<input type="checkbox"/> <b>The OTP</b> is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> <b>DEFENCE</b> is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
---	--

### III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	<b>COMMENTS</b>	<input type="checkbox"/> Required date: .
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: