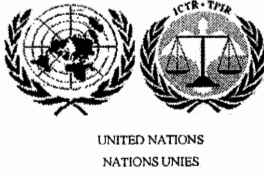


ICTR-98-44-I  
20-10-2003  
(6831-6828)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Original: English

TRIAL CHAMBER III

**Before:** Judge Lloyd G. Williams, Q.C., Presiding  
Judge Andréia Vaz  
Judge Khalida Rachid Khan

**Registrar:** Adama Dieng

**Date:** 20 October 2003

JUDICIAL PROCEEDINGS  
ICTR  
2003 OCT 20 A 10:54  
*[Signature]*

THE PROSECUTOR

v.

JOSEPH NZIRORERA et al.

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

DECISION DENYING DEFENCE REQUEST FOR  
CERTIFICATION TO APPEAL

*Rule 73(B) of the Rules of Procedure and Evidence*

**Counsel for the Accused:**  
Peter Robinson and Dior Diagne

**Counsel for the Co-Accused:**  
Didier Skornicki and John Traversi  
David Hooper and Andreas O'Shea  
Charles Roach and Frédéric Weyl

**Office of the Prosecutor:**  
Don Webster  
Dior Fall  
Ifeoma Ojemeni  
Simone Monasebian  
Holo Makwaia  
Tamara Cummings-John

*[Signature]*

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (“Tribunal”),

**SITTING** as Trial Chamber III, composed of Judges Lloyd G. Williams, Q.C., Presiding, Andréia Vaz and Khalida Rachid Khan (“Chamber”);

**CONSIDERING** the Decision on the Prosecutor’s Motion for Protective Measures for Witnesses rendered in the present Case on 12 July 2000 (“Decision of 12 July 2000”), in which Trial Chamber II of the Tribunal essentially ordered:

- (i) That the Accused or his Defence Counsel make a written request, on reasonable notice to the Prosecution, to the Chamber or a Judge thereof, to contact any protected victim or potential Prosecution witness or any relative of such person; and
- (ii) That when such interview is granted by the Chamber or a Judge thereof, with the consent of such protected person or his or her parents or guardians, if that person is under the age of 18, the Prosecution undertake all necessary arrangements to facilitate such interview. (“Contact Order of 12 July 2000”)

**CONSIDERING** the Chamber’s Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu, and Omar Serushago rendered in the present Case on 29 September 2003 (“Decision of 29 September 2003”), in which the Chamber denied the Defence Motion and directed the Registrar, pursuant to Rule 73(F) of the Rules of Procedure and Evidence (“Rules”), to deny to the Defence payment of any fees or costs associated with the preparation of the Motion, which was deemed frivolous and an abuse of process (“Order II of the Decision of 29 September 2003”);

**CONSIDERING FURTHER** the Chamber’s Decision on the Defence Motion for Reconsideration of Sanctions Imposed in Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu, and Omar Serushago rendered on 10 October 2003 (“Decision of 10 October 2003”), in which the Chamber *inter alia* considered that none of the reasons submitted in the Motion at issue constituted special circumstances warranting a reconsideration of Order II of the Decision of 29 September 2003;

**BEING NOW SEIZED** of the “Defence Request for Certification to Appeal from Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu, and Omar Serushago and Decision on Motion for Reconsideration”, filed on 13 October 2003 by the Defence for Accused Joseph Nzirorera (respectively, “Motion” and “Accused”);

**NOTING** that the Prosecutor did not file a reply to the Motion within the time-frame stipulated in Rule 73(E) of the Rules of Procedure and Evidence (“Rules”), and that he did not request an extension of time thereto;

**CONSIDERING** the Statute of the Tribunal ("Statute") and the Rules, and specifically, Rule 73(B) of the Rules, which reads:

**Rule 73: Motions**

(B) Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

**NOW REVIEWS** the Motion solely on the basis of the written brief filed by the Defence, pursuant to Rule 73(A) of the Rules.

**Defence Submissions**

1. The Defence generally contends that the Decisions of 29 September 2003 and 10 October 2003 for which certification to appeal is sought will significantly affect the fair and expeditious conduct of the proceedings and, possibly, the outcome of the trial in that they penalize Counsel for the Defence for legitimate and prudent actions. The Defence emphasises that, if Counsel is repeatedly sanctioned without good cause, the conduct of the proceedings could hardly be considered fair, while an immediate resolution of this issue will materially advance the proceedings in allowing Counsel for the Accused to be a vigorous advocate for his client without fear of unjustified sanctions.
2. In respect of the Decision of 29 September 2003, the Defence avers that it was fair, and arguably correct, to assume that Jean Kambanda, Georges Ruggiu and Omar Serushago were protected prosecution witnesses pursuant to the Decision of 12 July 2000 and that, as such, the Contact Order of 12 July 2000 was to be respected. The Defence contends that, in deciding not to contact these witnesses directly but, rather, in applying to the Chamber for leave to contact them it acted reasonably. According to the Defence therefore, Order II of the Decision of 29 September 2003 was unfair.
3. In respect of the Decision of 10 October 2003, the Defence notes that the Chamber held on reconsideration that Counsel for the Accused should have informed the Chamber of the Prosecutor's refusal to allow the Defence to interview prosecution witnesses. The Defence contends that, however, the Contact Order of 12 July 2000 provided for a written request to be made to the Trial Chamber first, then for the Prosecutor's obligation to facilitate the interview once leave thereto is granted. For this reason, Counsel for the Defence allegedly saw no reason to impugn the Prosecutor by referring to his refusal in the Motion.

**Deliberations**

4. Counsel ought to have been fully aware that the witnesses in question were not protected witnesses. They are all persons convicted by the Tribunal, their names are well known and they have testified in open court in previous cases at this Tribunal. This Chamber has previously brought to the attention of Counsel that he should have regard for judicial time

and that he should take into account the expense to the resources of the Tribunal, but to no avail.

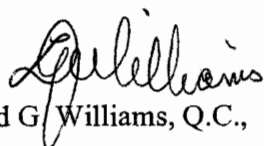
5. The Chamber is not satisfied that the Decisions of 29 September 2003 and 10 October 2003 could significantly affect the fair and expeditious conduct of the proceedings and the outcome of the trial, or that an immediate resolution of the matters at issue will materially advance the proceedings.

**ACCORDINGLY,**

**THE CHAMBER**

**DENIES** the Request for certification to appeal.

Arusha, 20 October 2003



Lloyd G. Williams, Q.C.,  
Presiding Judge



Andréia Vaz  
Judge



Khalida Rachid Khan  
Judge

(Seal of the Tribunal)

