



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ICTR 98-44-I
21-10-2003
(6859-6857)

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Or: Eng

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 21 October 2003

The PROSECUTOR

v.

**Édouard KAREMERA,
Mathieu NGIRUMPATSE,
Joseph NZIRORERA and
André RWAMAKUBA**

Case No. ICTR-98-44-I

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**CERTIFICATION TO APPEAL THE DECISION OF 8 OCTOBER 2003
DISMISSING THE PROSECUTOR'S MOTION TO AMEND THE
ACCUSED'S INDICTMENT**

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

Office of the Prosecutor:

Don Webster
Dior Fall
Ifeoma Ojemeni
Simone Monasebian
Holo Makwaia
Tamara Cummings-John

Counsel for the Defence

Didier Skornicki and John Traversi
Charles Roach and Frédéric Weyl
Peter Robinson and Dior Diagne
David Hooper and Andreas O'Shea

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

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

RECALLING the *Décision relative à la Requête du Procureur en disjonction d'instances et en autorisation de modification de l'Acte d'accusation* rendered in the present Case on 8 October 2003 (« Decision of 8 October 2003 »);

BEING SEISED of the "Prosecutor's Request for Certification to Appeal the Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment [filed pursuant to Rule 73(B)]," filed on 15 October 2003 ("Request");

NOTING that the Defence did not respond to the Request within the time-frame stipulated in Rule 73(E) of the Rules of Procedure and Evidence ("Rules") and that it did not seise the trial Chamber of a request for an extension of time to file any submissions in reply;

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

Decisions rendered on [Rule 73] 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 proceedings¹

NOW REVIEWS the Request, pursuant to Rule 73(A) of the Rules, solely on the basis of the written brief filed by the Prosecution;

Prosecutor's Submissions

1. Pursuant to Rule 73(B) of the Rules, the Prosecutor is seeking certification for leave to file an interlocutory appeal against the Decision of 8 October 2003.
2. The Prosecutor contends that the first criteria for certification under Rule 73(B) is met. According to him, the Decision of 8 October 2003 involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, in that:
 - (i) The dismissal of his request for leave to substantially modify the Indictment may lead the Defence, at trial, to object to the introduction of certain prosecution evidence, including newly acquired evidence.
 - (ii) The Chamber erred in law in granting only the Prosecutor's request for leave to withdraw certain counts in the Indictment, thus acquitting *de facto* the Accused of those counts.
3. The Prosecutor also contends that the second criteria for certification under Rule 73(B) is met. According to him, the Decision of 8 October 2003 involves an issue for which an immediate resolution by the Appeals Chamber may materially advance the proceedings.

¹ Sub-Rule (B) in its present formulation was added to Rule 73 at the Thirteenth Plenary Session of the Tribunal in May 2003.

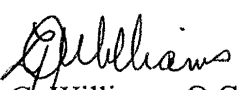



According to the Prosecutor, should objections as anticipated at Sub-Paragraph (a)(i) above be granted by the Chamber, and should certain prosecution evidence be excluded from the trial records as a consequence, appeals by the Prosecution on potential acquittals is foreseeable, which appeals in turn would raise the prospect of new trials.


Deliberations

4. The Chamber considers that the Prosecutor's application falls within the provisions of Rule 73(B) of the Rules. Accordingly, the Chamber grants the Prosecutor's request for certification to appeal.

Arusha, 21 October 2003


Lloyd G. Williams, Q.C.
Presiding Judge


Andréia Vaz
Judge


Khalida Rachid Khan
Judge

[Seal of the Tribunal]

