

ICTR-99-50-I
28-10-2003
(8527-8524)

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Mugwanya



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Or: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Asoka de Zoysa Gunawardana
Judge Arlette Ramaroson

Registrar: Mr Adama Dieng

Date: 29 October 2003

2003 OCT 28 P 5:00
JUDICIAL RECORDS SECTION
FILED

The PROSECUTOR
v.
Prosper MUGIRANEZA
Case No. ICTR-99-50-I

**DECISION ON PROSPER MUGIRANEZA'S REQUEST PURSUANT TO RULE
73 FOR CERTIFICATION TO APPEAL DENIAL OF HIS MOTION TO
DISMISS FOR VIOLATION OF ARTICLE 20(4)(C) OF THE STATUTE,
DEMAND FOR SPEEDY TRIAL AND APPROPRIATE RELIEF**

FOR THE OFFICE OF THE PROSECUTOR:

Paul Ng'arua
Melinda Pollard
Elvis Bazawule
George Mugwanya

Signature

FOR THE DEFENCE:

Mr. Tom Moran

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

SITTING as Trial Chamber II, composed of Judge William H. Sekule, Presiding, Judge Asoka de Zoysa Gunawardana and Judge Arlette Ramaroson (the "Chamber");

BEING SEIZED of "Prosper Mugiraneza's Request pursuant to Rule 73 for Certification to Appeal Denial of His Motion to Dismiss for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and Appropriate Relief" filed on 2 October 2003, (the "Motion");

NOTING the "Prosecutor's Response to Prosper Mugiraneza's Request pursuant to Rule 73 for Certification to Appeal Denial of His Motion to Dismiss for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and Appropriate Relief" filed on 13 October 2003, (the "Response");

NOW CONSIDERS the matter solely on the basis of the written briefs of the Parties, pursuant to Rule 73(A) of the Rules.

HEREBY DECIDES the motion.

INTRODUCTION

1. By its Decision of 2 October 2003 ("the Decision"), the Chamber denied a motion of the Defence for Mugiraneza.¹ The motion sought the dismissal of the indictment based on an alleged violation of the right to trial without undue delay under Article 20(4)(C) of the Statute and for appropriate relief.

SUBMISSIONS OF THE PARTIES

Submission of the Defence

2. Pursuant to Rules 73(B) and 73(C), the Defence for Mugiraneza requests certification of the Trial Chamber for interlocutory appeal.

3. The Defence suggests that the recent decision in the case of *The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva* (hereinafter the "Bagosora Decision"),² Trial Chamber I construed Rule 73 in such a way that a motion challenging the fairness of the trial or its or its outcome should be subject to interlocutory appeal to spare the accused the possibility of an unnecessary trial and to

¹ *The Prosecutor v. Prosper Mugiraneza*, Case No. ICTR-99-50-I, Decision on Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief, 17 July 2003.

² *The Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Certification of Interlocutory Appeal from Decisions on Severance and Scheduling of Witnesses, 11 September 2003.

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allow the Prosecutor to narrow its case. It submits that the relief sought by Mugiraneza, dismissal of the indictment with prejudice, meets the *Bagosora* standard for interlocutory appeal.

4. The Defence suggests that if leave to appeal is granted and the Appeals Chamber reverses the Trial Chamber, Mugiraneza would be spared the necessity of any trial. It acknowledges that while appeal of the Trial Chamber's order after judgment is possible, such a result would significantly affect the fairness of the proceedings in that Mugiraneza would be incarcerated throughout a lengthy trial and appellate process. It suggests that an immediate resolution by the Appeals Chamber would materially advance the proceedings.

Prosecutor's Response

5. The Prosecution submits that the Defence must show how the error of law or fact that the impugned decision against which certification is sought significantly affects 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. The Prosecution further submits that this should be particularised and elaborated upon in order to justify certification and that a mere bland assertion cannot ground certification.

6. The Prosecution contends that Rule 73(B) does not relieve the appellant of the burden to set out explicitly how the requirements of the rule are met and demonstrate the grounds on which an appeal should be heard.

7. The Prosecution responds to the Defence Motion by stating that the grounds indicated by the Defence are insufficient to justify certification for appeal. And prays that the Request to Certify be denied.

DELIBERATIONS

8. The Rule governing interlocutory appeals from decisions on motions has recently been amended and the relevant sub-Rule now reads as follows:

Rule 73: Motions

(A) [...]

(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.

(C) Requests for certification shall be filed within seven days of the filing of the impugned decision.

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If certification is granted, a party shall appeal to the Appeals Chamber within seven days of the filing of the decision to certify.

(D) [...]

(E) [...]

(F) [...]


(G) [...]

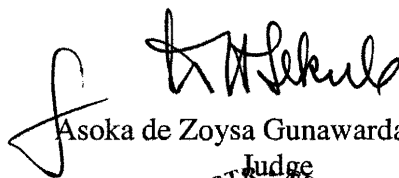
9. After having reviewed the Defence's application, the Chamber is of the opinion that it falls within the provisions of Rule 73(B) of the Rules. Accordingly, the Chamber grants the Defence's request for certification to appeal.


THE TRIAL CHAMBER HEREBY

GRANTS the Defence Request for certification on Appeal;

Arusha, 29 October 2003


William H. Sekule
Presiding Judge


Asoka de Zoysa Gunawardana
Judge


Arlette Ramaroson
Judge

