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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 27 November 2003

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THE PROSECUTOR

v.

Tharcisse MUVUNYI
Idelphonse NIZEYIMANA, and
Idelphonse HATEGEKIMANA

Case No. ICTR-2000-55-I

**DECISION ON THE REQUEST OF THE ACCUSED FOR CERTIFICATION
TO APPEAL AGAINST THE DECISION AUTHORIZING
THE DEPOSITION OF PROSECUTION WITNESS QX**

Rule 73(B) of the Rules of procedure and evidence

Office of the Prosecutor:

Silvana Arbia
Jonathan Moses
Adelaide West
Adesola Adeboyejo
Manuel Bouwknecht
Astou M'Bow

Counsel of Tharcisse Muvunyi:

Francis Musei, Duty Counsel

Counsel of Idelphonse Hategekimana:

Jesse Kiritta, Duty Counsel

[Signature]

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

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

BEING SEISED of the Motion untitled “Demande de certification de l’appel de la decision du 11 novembre 2003”, filed by the Accused Idelphonse Hategekimana on 14 November 2003 (“First Motion”);

BEING ALSO SEISED of the Motion untitled “Contestation de la Décision de la Chambre III relative à la Requête extrêmement urgente du Procureur aux fins de déposition du Témoin à charge QX et Demande d’autorisation pour faire appel”, filed by the Accused Tharcisse Muvunyi on 17 November 2003 (“Second Motion”);

CONSIDERING the Prosecutor’s Response to the Motions of the Accused untitled “Prosecutor’s Reply to Tharcisse Muvunyi’s Motion Challenging the Decision of Trial Chamber III Relating to the Extremely Urgent Motion for the Deposition of Witness QX and his Request for Authorisation to Appeal and Idelphonse Hategekimana’s Request for Certification to Appeal the Decision of 11 November 2003”, filed on 21 November 2003 (“Response”);

NOTING the Decision on the Prosecutor’s Extremely Urgent Motion for the Deposition of Witness QX, rendered on 11 November 2003 (“Decision”);

CONSIDERING the Statute of the Tribunal (“Statute”) and the Rules of procedure and evidence (“Rules”);

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

Arguments of the parties***Accused***

1. The Accused Hategekimana submits that the Trial Chamber erred by stating that Duty Counsel will duly represent the Accused at the taking of the deposition of Prosecution Witness QX. The Accused therefore requests a certification to appeal in order to save its rights, taking into account the importance of the testimony for the Prosecution case. Consequently the Accused prays the Trial Chamber to postpone the implementation of its Decision of 11 November 2003.

2. The Accused Muvunyi requests a certification (“first request”) for an interlocutory appeal against the same Decision, arguing that it affects his right to a fair trial because he cannot attend the deposition for security reasons, and does not have any Lead Counsel at the moment. The Accused complains that his request for withdrawal of Lead Counsel is still pending before the Trial Chamber, and urges the Chamber to render a decision. He affirms that Duty Counsel cannot properly represent his interests, and will not be at the trial when Lead Counsel will be assigned. He also affirms that the Prosecutor did not provide any medical certificate regarding the Witness’ health.

3. Furthermore the Accused requests that the Trial Chamber instructs the Registrar to assign urgently new Lead Counsel and Co-Counsel so that they can represent him before the Trial Chamber and before the Appeals Chamber on any legal dispute ("second request").

Prosecution

4. The Prosecutor recalls the Trial Chamber's Decision of 18 November 2003 instructing the Registrar to withdraw Mr. Michael Fisher and to assign new Lead Counsel to the Accused Muvunyi, and the Registrar's Decision of the same date withdrawing Lead Counsel and assigning Duty Counsel. He therefore argues that the request of the Accused regarding withdrawal of Lead Counsel is moot.

5. The Prosecutor submits that the Decision of 11 November 2003 did not violate the right of the Accused to a fair trial, and affirms that Duty Counsel can protect the interests of the Accused in the absence of Lead Counsel. The Prosecutor further asserts that granting the requests of the Accused will amount to an infringement of the rights of the Prosecution.

Deliberations

6. Because of the precarious state of health of the witness, the matter is one of urgency and therefore there can be no further delay. In its Decision of 18 November 2003, the Chamber made it clear that the change of Lead Counsel would not be considered as a ground for delaying the proceedings.

7. The Accused are free to attend the proceedings if they choose to: they need only to indicate their intention to attend.

8. In the opinion of the Chamber, Duty Counsel is competent to conduct the taking of the deposition of Witness QX and therefore no prejudice will result to the Accused.

9. In the Decision on the Accused Muvunyi's Request to Instruct the Registrar to Replace Assigned Lead Counsel rendered on 18 November 2003, the Trial Chamber has already instructed the Registrar to replace the Accused's Lead Counsel, as soon as possible. On the same date, the Registrar has rendered his Decision of Withdrawal of Mr. Michael Fisher as Lead Counsel of the Accused Tharcisse Muvunyi. The Trial Chamber is therefore of the view that the matter of the replacement of Lead Counsel is in progress and there is no need for the Trial Chamber to rule on this matter. According to the rules, it is only when Lead Counsel has been assigned that Co-Counsel can be assigned on the request of Lead Counsel. The second request of the Second Motion shall therefore be dismissed.

10. The Trial Chamber reminds the Accused Hategekimana that his refusal to complete the form provided by the Defence Counsel Management Section ("DCMS") is delaying the assignment of Lead Counsel.¹ The Trial Chamber considers that he cannot complain about the delay in assigning Lead Counsel when his own failure is the cause of such delay. The Trial Chamber expresses the hope that he will carry out the administrative requirement in order for the Registrar to assign Lead Counsel.

¹ See: Letter from DCMS to Ildephonse Hategekimana, 15 July 2003 (ICTR/JUD-11-5-2-2436); Letter from Ildephonse Hategekimana to DCMS, 18 July 2003; and Letter from DCMS to Ildephonse Hategekimana, 10 September 2003.

11. The Trial Chamber reminds the Accused that the taking of the deposition of Prosecution Witness QX was decided in the interests of justice, and to facilitate the administration of justice. The Trial Chamber also reminds the Accused that Duty Counsel is expected to represent accused until the assignment of Lead Counsel. The Chamber considers that the assignment of Duty Counsel in the instant case is in the interests of justice. The Accused's arguments regarding the competence of Duty Counsel are therefore without legal foundation, and Duty Counsel are reminded of their obligation pursuant to the rules.

FOR THE REASONS AFOREMENTIONED,

THE CHAMBER

DENIES the Accused's Motions in all respect.

Arusha, 27 November 2003

Lloyd G. Williams, Q.C.
Presiding Judge

Andréia Vaz
Judge

Khalida Rachid Khan
Judge

[Seal of the Tribunal]

