

ICTR - 2001-70-AR65(D)  
18 December 2003  
(107h - 106h)

107h



UNITED NATIONS  
NATIONS UNIES

International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda

**BEFORE A BENCH OF THE APPEALS CHAMBER**

Before:

Judge Inés Mónica Weinberg de Roca, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar

Registrar:

Mr. Adama Dieng

Decision of:

18 December 2003

2003 DEC 22 A 8:41

**EMMANUEL RUKUNDO**

v.

**THE PROSECUTOR**

Case No. ICTR-2001-70-AR65(D)

International Criminal Tribunal for Rwanda  
Tribunal pénal International pour le Rwanda  
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NAME / NOM: PHS BURNETT  
DATE: 19-xii-03  
SIGNATURE: [Signature]

**Decision on Leave to Appeal (Provisional Release)**

**Counsel for the Appellant**

Mr. Philippe Moriceau  
Mr. Wenceslas Habiyaremye

**Counsel for the Prosecution**

Ms. Silvana Arbia

ICTR Appeals Chamber  
Date: 18-Dec-03  
Action: P.S.  
Copied To: Parties;

Concerned Judges;  
ALOs / LO,  
Judicial Archiving;  
LSS  
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106h.

**THIS BENCH** of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994 ("International Tribunal");

**BEING SEIZED OF** the "Requête aux fins d'une autorisation d'interjeter appel de la décision du 18 août 2003", dated 10 November 2003 and filed on 11 November 2003 by Emmanuel Rukundo ("Applicant"), pursuant to Rule 65(D) of the Rules of Procedure and Evidence of the International Tribunal ("Rules");

**CONSIDERING** the "Prosecutor's Response to Rukundo's Motion for Leave to Appeal the Decision of 18 August 2003", filed confidentially on 17 November 2003;

**NOTING** the 18 August 2003 decision of Judge Lloyd G. Williams, designated by Trial Chamber III of the International Tribunal pursuant to Rule 73(A) of the Rules, denying the Applicant's motion for provisional release ("Impugned Decision");<sup>1</sup>

**CONSIDERING** that according to the settled jurisprudence of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), there is "good cause" within the meaning of Rule 65(D) of the ICTY Rules of Procedure and Evidence, which is identical to the present version of the ICTR Rules, for granting leave to appeal when it appears that the Trial Chamber "may have erred" in rendering the decision;<sup>2</sup>

**CONSIDERING** that the Trial Chamber and the Designated Judge may have acted *ultra vires* under Rule 65, which requires provisional release to be adjudicated by a "Trial Chamber", and that this would require the Impugned Decision to be quashed;

**CONSIDERING**, however, that this Bench can only either grant or deny leave to appeal, and that a decision to quash the Impugned Decision can only be taken by a full bench;

**HEREBY GRANTS** leave to appeal.

Done in English and French, the English text being authoritative.

Done this 18<sup>th</sup> day of December 2003,  
At The Hague, The Netherlands.



Judge Weinberg *ad hoc* Presiding

[Seal of the Tribunal]

<sup>1</sup> *Prosecutor v. Rukundo*, "Decision on Defence Motion to Fix a Date for the Commencement of the Trial of Father Emmanuel Rukundo or, in the Alternative, to Request his Provisional Release", 18 August 2003.

<sup>2</sup> See, *inter alia*, *Prosecutor v. Limaj et al.* IT-03-66-AR65, "Decision on Fatmir Limaj's Request for Provisional Release", 31 October 2003, paras. 6-7.