

ICR-2000-55-I
10-2-2004
(4682-4680)

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JUDICIAL

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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 Accused's Motion for Review entitled "*Demande de révision de la Décision du 27 novembre 2003*", filed by the Accused Idelphonse Hategekimana on 1 December 2003;

CONSIDERING the Prosecutor's Reply to Idelphonse Hategekimana's Motion Challenging the Decision of Trial Chamber III Rejecting his Request for Certification to Appeal, filed on 11 December 2003;

NOTING the Decision on the Request of the Accused for Certification to Appeal against the Decision Authorising the Deposition of Prosecution Witness QX delivered on 27 November 2003 ("Certification Decision");

NOTING ALSO the Decision on the Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX, rendered on 11 November 2003 ("Deposition Decision");

CONSIDERING the Statute of the Tribunal ("Statute") the Rules of Procedure and Evidence ("Rules");

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

Arguments of the Parties

Accused

1. The Accused Hategekimana submits that the Chamber erred in its reliance on evidence that was partial and incomplete and thus in deciding that the lack of Lead Counsel was due to his own actions. The Accused states that there exists further correspondence between the Registry and the Accused on the matter of assignment of Counsel that constitute new facts. The Accused therefore requests a review of the Decision of 27 November 2003 taking these new facts into account.

2. The Accused repeats his request for certification to appeal against the Deposition Decision, arguing that the Chamber did not deliberate on whether the request met the requirements of Rule 73(B).

3. The Accused maintains that he has not had adequate legal representation and therefore requests the Chamber to stay the deposition of Witness QX pursuant to the Decision of 11 November 2003 until such time as he is duly assigned Counsel. In this regard the Accused requests the Chamber to order the Registrar to properly assign Lead Counsel.

Prosecution

4. The Prosecutor submits that the Accused's request for review under Rule 120 of the Rules must be dismissed as baseless and for want of merit. On the issue of the letters referred to by the Trial Chamber in the Decision of 27 November 2003, the Prosecutor submits that the Registry is bound by the Statute and the Rules, and has the duty to assist the Court in arriving at a just determination of the case before it.

Deliberations

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5. The Accused is requesting that the Decision of 27 November 2003 be reviewed. The Chamber is of the view that the arguments adduced by the Accused constitute an appeal against the Chamber's own decision, which the Chamber will not entertain. The Chamber further notes that the requirements of Article 25 of the Statute and Rule 120 of the Rules, which govern requests for review, are not met. However, in the circumstances, the Chamber will treat the matter as one for reconsideration.

7. While the Decision of 27 November 2003 did not provide specific grounds for the denial of certification to appeal *per se*, the basis for the Chamber's decision as a whole and its consequent Order is clear. The Chamber indicated, at paragraph 6 that the circumstances of the case required diligence and that any delay in the taking of Prosecution Witness QX's deposition would hamper the expeditious conduct of the proceedings. The Chamber based its Decision on grounds of the materiality of Prosecution Witness QX's anticipated evidence, his old age and his poor state of health. As a consequence, considering Rule 73(B) of the Rules, the request for certification to appeal fell to be dismissed. Having reconsidered the matter in the present Motion, the Chamber holds the view that the grounds for denying the certification continue to be valid and accordingly reiterates its views in holding that the present request falls to be denied.

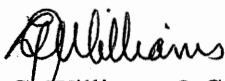
8. The Chamber recalls that the assignment of Lead Counsel is essentially a matter to be resolved by the Registrar. Accordingly, and in light of the particular circumstances of this case, the Chamber is not presently disposed to intervene in the matter.

THE CHAMBER, UPON RECONSIDERATION,


REITERATES its Denial of the Accused's request for certification to appeal against the Decision of 11 November 2003; and

DENIES the Accused's Motion in all other respects.

Arusha, 10 February 2004


Lloyd G. Williams, Q.C.
Presiding


Andréia Vaz
Judge


Khalida Rachid Khan
Judge

