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ICTR-98-44-T
2-3-2004
(9862-9868)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

ENGLISH
Original: FRENCH

Before: Judge Andréia Vaz, presiding
Judge Florence Rita Arrey
Judge Flavia Lattanzi

Registry: Adama Dieng

Date: 19 February 2004

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THE PROSECUTOR
v.
EDOUARD KAREMERA,
MATHIEU NGIRUMPATSE,
JOSEPH NZIRORERA and
ANDRE RWAMAKUBA

Case No. ICTR-98-44-T

**DECISION ON APPLICATION FOR CERTIFICATION OF APPEAL BY THE
ACCUSED AGAINST THE ORAL DECISION OF 4 DECEMBER 2003 ON
ADMISSION OF EVIDENCE OF ACTS THAT OCCURRED PRIOR
TO 1994 CITED BY WITNESS GBV**
Rule 73(B) of the Rules of Procedure and Evidence

Office of the Prosecutor:
Don Webster
Dior Fall
Ifeoma Ojemeni
Simone Monasebian
Holo Makwala
Tamara Cummings-John
Ayo Fadugba

Defence for the Accused:
Peter Robinson

Defence for the co-Accused:
Dior Diagne
Charles Roach and Frédéric Weyl
David Hooper and Andreas O'Shea

CIII04-026 (E)

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Translation certified by the LSS, ICTR

Sunkarie Ballah-Conteh

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

SITTING as Trial Chamber III composed of Judges Andrézia Vaz, presiding, Florence Rita Arrey and Flavia Lattanzi (“the Chamber”),

SEIZED of an oral application for certification of appeal pursuant to Rules 73(B) of the Rules of Procedure and Evidence (“the Rules”) made by the Defence for the Accused Joseph Nzirorera (“the Accused”) at the hearing of 4 December 2003,

CONSIDERING the Statute of the Tribunal and in particular Rule 73(B) of the Rules, which establishes two concurrent criteria governing requests for certification for interlocutory appeal against decisions rendered pursuant to Rule 73 of the Rules:

“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.”

DECIDES as follows:

Introduction

1. By oral decision rendered on 4 December 2003, the Chamber denied an objection by the Defence for the Accused Nzirorera to the admissibility of part of the testimony of Prosecution witness GBV, on the grounds that the acts referred to in that part of his testimony occurred prior to 1994, the year in respect of which the Tribunal has jurisdiction by virtue of the Statute. Witness GBV had, *inter alia*, referred to massacres of Tutsis in Mukingo *commune* in 1991. He testified that in his view those massacres constituted a phase in the extermination of the Tutsis in Rwanda, which would be completed in April 1994. The Chamber considered that the evidence was admissible because it was produced to prove the conspiracy to commit the crime of genocide in 1994 alleged against the Accused.¹

Defence motion

2. At the hearing of 4 December 2003, after the decision was rendered, the Defence requested the Chamber to grant certification pursuant to Rule 73(B) of the Rules, so that it could lodge an interlocutory appeal. In support of its request, the Defence submitted that the Chamber had wrongfully applied a decision by Trial Chamber I rendered in the case *Bagosora et al* on 18 September 2003.² The Defence specified that the Chamber did not apply the criterion spelled out in that decision, to the effect that the Prosecution must first establish the link between the evidence in question and the criminal conspiracy of which the objective was achieved in 1994. On the basis of that criterion, Trial Chamber I had rejected certain allegations of acts occurring prior to 1994 in the case *Bagosora*. Moreover, the Defence submitted that the issue of admitting or not admitting evidence of acts occurring prior to 1994 would affect the outcome and duration of the trial, and that its immediate resolution by the Appeals Chamber might materially advance the proceedings, in accordance with the criteria governing certification pursuant to Rule 73(B). The Defence added that Trial Chamber I had granted the certification of appeal in its decision of 18 September 2003.³

Prosecutor's Response

3. The Prosecution responded that the Chamber had correctly applied the precedents cited in the oral decision of 4 December 2003 and that therefore certification should not be granted.⁴

¹ T. 3 December 2003 pp. 70 to 72 (English version – objection by the Defence) and T. 4 December 2003 p. 4 (Decision of the Chamber).

² The Defence refers to the Decision on admissibility of the testimony of witness BBY (*The Prosecutor v. Théoneste Bagosora et al*, Case No. ICTR-98-41-T)

³ T. 4 December 2003, pp. 5 to 6 (English version – Motion by the Defence and Prosecutor's Response).

⁴ *Idem*.

Deliberations

4. The Appeals Chamber acknowledged that Trial Chambers have a certain discretion as regards the admissibility of evidence, particularly in respect of evidence relating to acts occurring prior in Rwanda to 1994.⁵

5. Whereas it is true that Trial Chamber I granted certification pursuant to Rule 73(B) in relation to a similar issue, the Appeals Chamber has since rendered its decision on the appeal in question and confirmed the relevant decision of Trial Chamber I.⁶ Indeed, the Chamber based its deliberations of 4 December 2003 on the decision of Trial Chamber I, among other precedents. That decision, like other decisions of the Appeals Chamber on issue of admissibility of evidence relating to acts occurring prior to 1994, reinforces the Chamber's reasoning justifying the oral decision of 4 December 2003.⁷ Therefore the Chamber does not see in what respect an interlocutory appeal could materially advance the proceedings in this instance.

6. Contrary to the allegations of the Defence, the Chamber had felt that the Prosecution had sufficiently established the link between the evidence given by witness GBV, the admissibility of which the Defence contested, and the criminal intent of which the objective was achieved in 1994. Moreover, by reserving its decision on the assessment of the probative value of the evidence, the Chamber could not, by its decision of 4 December 2003, have impaired the fairness of the proceedings.⁸

FOR THE THESE REASONS

THE CHAMBER

⁵ *The Prosecutor v. Théoneste Bagosora et al*, Case No. ICTR-98-41-AR93 and ICTR-98-41-AR93.2, *Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence*, 19 December 2003, para. 11.

⁶ *Idem.*, Case No. ICTR-98-41-T, "Decision on Prosecution Request for Certification of Appeal on Admission of Testimony of Witness DBY," 2 October 2003 (Trial Chamber I). See also the *Bagosora* decision by the Appeals Chamber dated 19 December 2003.

⁷ See in this connection the Appeals Chamber, *Hassan Ngeze and Ferdinand Nahimana v. the Prosecutor*, Case No. ICTR 97-27-AR72 and ICTR 96-11-AR72, "Decision on interlocutory appeals, 5 September 2000". See also *Jean-Bosco Barayagwiza v. the Prosecutor*, Case No. ICTR-97-19-AR72, "Decision" (interlocutory appeals dated 11 April and 6 June 2000, 14 September 2000). Finally, see the *Bagosora* decision of 19 December 2003.

⁸ See T. 4 December 2003, p. 7.

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DENIES THE APPLICATION FOR CERTIFICATION OF APPEAL AGAINST THE DECISION OF 4 DECEMBER 2003.

Arusha, 19 February 2004

[Signed]

Andrésia Vaz,
Presiding Judge

[Signed]

Flavia Lattanzi
Judge

[Signed]

Rita Arrey
Judge

[Seal of the Tribunal]

