

ICTR-99-50-T
23-02-2004
(12314 — 12310)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Or: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Zoysa Gunawardana, Presiding
Judge Khalida Rachid Khan
Judge Lee Gacuiga Muthoga

Registrar: Mr. Adama Dieng

Date: 20 February 2004

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jerôme BICAMUMPAKA
Prosper MUGIRANEZA
Case No. ICTR-99-50-T

2004 FEB 23 10:53
ICTR
PROSECUTOR GENERAL'S OFFICE

**DECISION ON THE PROSECUTION MOTION FOR CERTIFICATION TO
APPEAL THE CHAMBER'S DECISION OF 3 FEBRUARY 2004**

Office of the Prosecutor:

Paul Ng'arua
Ibukunolu Babajide
Elvis Bazawule
George Mugwanya

Counsel for the Defence:

Michelyne C. St. Laurent and Alexandra Marcil for Casimir Bizimungu
Howard Morrison and Ben Gumpert for Justin Mugenzi
Pierre Gaudreau and Michel Croteau for Jérôme Bicamumpaka
Tom Moran and Christian Gauthier for Prosper Mugiraneza

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

SITTING as Trial Chamber II, composed of Judge Asoka de Zoysa Gunawardana, Presiding, Judge Khalida Rachid Khan and Judge Lee Gacuiga Muthoga (the “Trial Chamber”);

BEING SEIZED of the “Prosecutor’s Request Pursuant to Rule 73 for Certification to Appeal a Decision of 3 February 2004 Excluding the Testimony of Witnesses AEI, GKE, GKF and GKI” filed on 6 February 2004, (the “said Motion”);

NOTING the “Response from Casimir Bizimungu to the Prosecutor’s Request Pursuant to Rule 73 for Certification to Appeal a Decision of 3 February 2004” filed on 12 February 2004, (the “Response”);

HAVING HEARD the parties submissions on his matter in open court on 18 February 2004;

CONSIDERING the Statute of the Tribunal and the Rules of Procedure and Evidence (the “Rules”) particularly Rule 73 (B) of the Rules which reads:

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.

SUBMISSIONS OF THE PARTIES

Submissions of the Prosecution

1. The Prosecution seeks, pursuant to Rule 73(B) of the Rules certification by the Trial Chamber for leave to appeal the Trial Chamber’s Decision of 3 February 2004¹ (the “Impugned Decision”).

(i) General Reasons

2. The Prosecution contends that the Trial Chamber erred in law in holding that the Indictment does not adequately specify the acts committed by the Accused Casimir Bizimungu which constitute the offences the Accused is charged with, although the acts constituting the said offences were committed throughout the country, not excluding any of the eleven prefectures. Further it was submitted that the Accused Casimir Bizimungu had additional notice by the disclosures of prior statements of the witnesses for the

¹ *Bizimungu et al.*, Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses AEI, GKE, GKF and GKI (TC), dated 3 February 2004, filed 4 February 2004

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Prosecution. It was also argued that the Accused Casimir Bizimungu as a Minister operated at the national level and that gave the Accused sufficient notice of the acts committed by him that constituted the charges against him thereby enabling him to properly prepare his defence.

3. The Prosecution submitted that there is divergent jurisprudence regarding the required specificity of an indictment and notice to an Accused person before this Tribunal to allow the Prosecution to lead evidence of certain facts, and that the Tribunal would benefit from an authoritative ruling on this matter by the Appeals Chamber.

4. Finally, as a general reason, the Prosecution submitted that the Tribunal according to its mandate has a wider duty to ensure that the full picture is revealed about what happened in Rwanda, and the Impugned Decision of the Trial Chamber effectively means that a part of this story involving the Accused in Ruhengeri préfecture will remain untold.

(ii) Justification for Appeal specifically under Rule 73(B) of the Rules

5. The Prosecution submitted that the Impugned 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 an immediate resolution by the Appeals Chamber would materially advance proceedings, thus satisfying the requirements of Rule 73(B) of the Rules for certification to appeal.

6. The Prosecution submitted that as a result of the Impugned Decision, the Prosecution has been barred from leading any evidence from Witnesses AEI, GKE, GKF and GKI due to testify as to the Accused's participation in the Genocide and other transgressions of international humanitarian law in Ruhengeri préfecture. In the submission of the Prosecution, the Impugned Decision unfairly ties the hands of the Prosecution, affecting the fair and expeditious conduct of the proceedings and the outcome of the trial.

7. In relation to the requirement of materially advancing the proceedings under Rule 73(B), the Prosecution submitted in its oral arguments that in reality the trial will be expedited by having this issue settled by the Appeals Chamber. Should the certification be granted, and the Appeals Chamber were subsequently to rule in its favour, the Prosecution would not be forced to find further witnesses to build up its evidence in relation to other acts of the Accused Casimir Bizimungu constituting the offences contained in the Indictment. Instead, the high quality of the evidence that it intends to call in relation to Ruhengeri préfecture would allow less witnesses to be called, and court time to be saved.

Defence Submissions

8. The Defence submitted that the right to appeal is not an inherent right; it arises only as the result of a statutory provision. The right to appeal is governed by Rule 73(B). According to the submissions of the Defence, this Rule should be read restrictively. The



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Defence added that the conditions of Rule 73 (B) are higher than a requirement of showing a "good cause".

9. The Defence is of the view that the Impugned Decision causes no prejudice to the Prosecution. In its submission, the Prosecution cannot argue that it suffers a prejudice from not being allowed to call testimony not relevant to the Indictment as presently constituted.

10. The Defence submitted that the Prosecution has failed to satisfy the provisions of Rule 73(B). Specifically, it has failed to demonstrate that the issue is one which affects the outcome of the trial, because the trial can only be conducted on the basis of the Indictment, and the Impugned Decision of the Trial Chamber is clear that the Indictment does not allow for evidence in relation to Ruhengeri préfecture to be called, therefore there is no reason to conclude that the outcome of the Trial has in any way been affected. Secondly, the Prosecution have failed to demonstrate that certification to appeal will materially advance the proceedings, and that in actual fact proceedings will be delayed should the Motion be granted.

HAVING DELIBERATED

11. In order to adjudicate on this Motion the Trial Chamber will consider whether the requirements of Rule 73(B) are met, and whether it is persuaded to use its discretion to grant certification for Appeal, as specified under the Rule.

12. The Chamber notes that in its Motion, the Prosecution recognises that "[t]he principle at stake in this Decision, relates to the degree of specificity that is required for an Indictment to escape the test of vagueness".² The Chamber is persuaded that, should the Appeals Chamber overrule the Trial Chamber's Decision, perhaps on the basis that the Indictment was indeed specific enough in all the circumstances of the case to allow the Trial Chamber to accept the evidence relating to the acts committed by the Accused Casimir Bizimungu in Ruhengeri préfecture and that the Trial Chamber erred on this point, this may indeed significantly affect the outcome of the Trial and materially advance the proceedings.

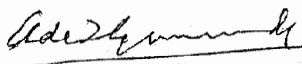
13. The Chamber is satisfied that the criteria in Rule 73(B) have sufficiently been met, and is persuaded that it should exercise its discretion under the Rule to certify the Motion to Appeal.

² Para. 13

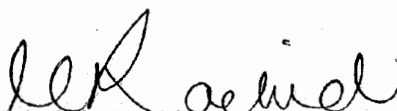
**FOR THE ABOVE REASONS, THE TRIAL CHAMBER
GRANTS the said Motion.**

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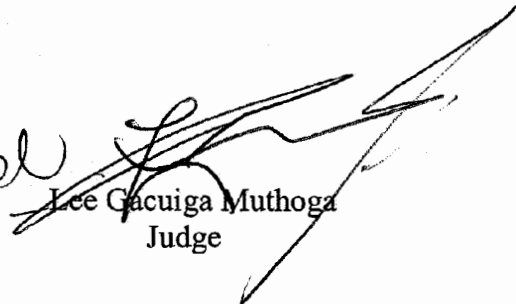
Arusha, 20 February 2004



Asoka de Zoysa Gunawardana
Presiding Judge



Khalida Rachid Khan
Judge



Lee Gacuiga Muthoga
Judge

