

ICTR

ICTR-2001-70-AR65(D)

8 MARCH 2004

(167/H-165/H)

167/H



UNITED NATIONS
NATIONS UNIES



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

IN THE APPEALS CHAMBER

Before:

Judge Fausto Pocar, Presiding
Judge Florence Mumba
Judge Mehmet Güney
Judge Wolfgang Schomburg
Judge Inés Mónica Weinberg de Roca

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Registrar:

Mr. Adama Dieng

Decision of:

8 March 2004

Emmanuel RUKUNDO
(Appellant)

v.

THE PROSECUTOR
(Respondent)

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

ICTR Appeals Chamber
Date: 8-iii-04
Action: PG
Copied To: Judges

*AWs / L0s
LSS / Parties
Archive [initials]*

**Decision on Appeal from the Decision of Trial Chamber III of 18 August 2003
denying Application for Provisional Release**

Counsel for the Appellant

Mr. Philippe Moriceau
Mr. Wenceslas Habiyaremye

Counsel for the Prosecution

Ms. Silvana Arbia

[Handwritten initials]

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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");

NOTING the "Decision on Leave to Appeal (Provisional Release)" issued by a Bench of this Appeals Chamber on 18 December 2003 in which the Defence request for leave to appeal was granted;

BEING SEIZED OF the "*Mémoire d'Appel de la Décision du 18 Août 2003 rejetant la demande de mise en liberté provisoire*" filed by Emmanuel Rukundo ("Appellant") on 30 December 2003 ("Appellant's Brief") and the "*Mémoire devant la Chambre d'Appel à l'encontre de la Décision du 18 Août 2003*" filed by Lead Counsel Moriceau on 30 December 2003 ("Defence's Brief"), which both challenge the "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" issued on 18 August 2003 ("Impugned Decision") by Judge Williams sitting as a single Judge designated by Trial Chamber III pursuant to Rule 73(A) of the Rules of Procedure and Evidence ("Rules") denying the Defence motion;

NOTING the "Prosecutor's Response to Rukundo's Motion for Leave to Appeal the Decision of 18 August 2003" filed by the Office of the Prosecutor on 5 January 2004 ("Prosecutor's Response");

NOTING that Rule 65(A) of the Rules provides that "an accused may not be provisionally released except upon an order of a Trial Chamber";

CONSIDERING that Rule 65 of the Rules sets out the procedure to be followed in deciding an application for provisional release and that the provision for "a Trial Chamber" to adjudicate in respect of the application may not be circumvented by delegating the decision to a single Judge pursuant to the provision of Rule 73(A) of the Rules;

FINDING therefore that in designating a single judge to decide an application for provisional release, Trial Chamber III violated the express requirements of Rule 65 and that consequently the Impugned Decision was taken by the single judge *ultra vires*;

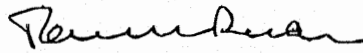
HEREBY QUASHES the Impugned Decision;

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AND ORDERS THE REMITTANCE of the application for Provisional Release to the full Trial Chamber for its decision.

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



Fausto POCAR
Presiding Judge

Done this 8th day of March 2004,
At The Hague,
The Netherlands.

