

ICTR-99-50-T  
24-03-04  
(12620-12617)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

12620  
mugenzi

Or: ENG

**TRIAL CHAMBER II**

**Before:** Judge Khalida Rachid Khan

**Registrar:** Mr. Adama Dieng

**Date:** 24 March 2004

**The PROSECUTOR**

v.

**Casimir BIZIMUNGU**

**Justin MUGENZI**

**Jerôme BICAMUMPAKA**

**Prosper MUGIRANEZA**

*Case No. ICTR-99-50-T*

2004 MAR 24 P 12:48

**DECISION ON THE PROSECUTION MOTION FOR CERTIFICATION TO  
APPEAL THE CHAMBER'S DECISION OF 5 FEBRUARY 2004**

**Office of the Prosecutor:**

Paul Ng'arua  
Ibukunolu Babajide  
Justus Bwonwonga  
Elvis Bazawule  
George William Mugwanya  
Shyam Lal Rajapaksa  
William Mubiru  
Olivier De Schutter

**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

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

**SITTING** as Trial Chamber II, composed of Judge Khalida Rachid Khan, assigned to decide this Motion pursuant to Rule 73(A) of the Rules of Procedure and Evidence, (the “Trial Chamber”);

**BEING SEIZED** of the “Prosecutor’s Request Pursuant to Rule 73B for Certification to Appeal a Decision of 5 February 2004 Excluding the Testimony of Witnesses GJV, GJQ, GJY, GKP, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW and GJZ” filed on 12 February 2004, (the “said Motion”);

**NOTING** that no response to the said Motion has been filed by the Defence.

**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.

## **INTRODUCTION**

1. Judge Asoka de Zoysa Gunawardana, Presiding Judge in this case, is temporarily absent from the seat of the Tribunal, for medical reasons. In consequence, although the issues raised in the Motion have been deliberated upon by the Trial Chamber as fully constituted, the Motion has been assigned to Judge Khan to decide pursuant to Rule 73(A),

## **SUBMISSIONS OF THE PARTIES**

### *Submissions of the Prosecution*

2. 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 5 February 2004<sup>1</sup> (the “Impugned Decision”).

3. The Prosecution contends that the Trial Chamber erred in law in holding that the Indictment does not adequately specify certain areas in which the acts committed by the Accused Prosper Mugiraneza which constitute the offences the Accused is charged with, although the acts constituting the said offences were committed throughout the country.

<sup>1</sup> *Bizimungu et al.*, Decision on Prosper Mugiraneza’s Motion to Exclude Testimony of Witnesses Whose Testimony is Inadmissible in View of the Trial Chamber’s Decision of 23 January 2004 and for Other Appropriate Relief (TC), dated 5 February 2004, filed 6 February 2004



Specifically, in holding that evidence implicating the Accused in Kibungu and Cyangugu prefectures for crimes charged in the indictment other than Conspiracy and Complicity in Genocide, the Trial Chamber “erred in law and fact”. The Prosecution argues that it was sufficient that the Accused was given notice in the Indictment that the crimes charged were committed “throughout Rwanda”, as Kibungu and Cyangugu prefectures lie within that area. Furthermore, it submits that the Trial Chamber failed to consider that “the materiality of evidence to an Indictment, or the degree of specificity required of an Indictment also is dependent, *inter alia*, on the nature or mode of the accused’s participation in the alleged crime(s), the complexity of the crimes and the geographical area and period over which the crimes are committed”.

4. The Prosecution further submitted that the Chamber erred in law by failing to consider whether the Prosecution took action to afford the Defence adequate notice of the allegations [as regards charges other than Conspiracy and Complicity in Genocide occurring in Kibungu and Cyangugu prefectures], thus curing any possible generalities in the indictment.

5. The Prosecution submitted that “the issues in the Impugned Decision for which certification is being sought significantly affect the fair and expeditious conduct of the proceedings, the outcome of the trial, and is one that in the Prosecutor’s compelling opinion merits the exercise of the Trial Chamber’s discretion to certify it for an immediate resolution by the Appeals Chamber in order to materially advance the proceedings”.

#### HAVING DELIBERATED

6. The Trial Chamber recalls its recent Decisions in relation to requests for certification to Appeal pursuant to Rule 73 (B).<sup>2</sup> The Trial Chamber is satisfied that the requirements of Rule 73(B) have been met in this case, and, in the exercise of its discretion, certifies the Motion to Appeal.

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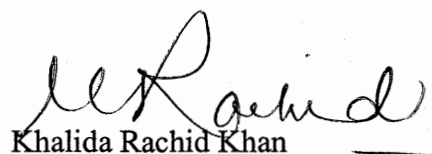
<sup>2</sup> *Bizimungu et al.*, Decision on the Prosecution Motion for Certification to Appeal the Chamber’s Decision of 3 February 2004 (TC), dated 20 February 2004, filed 23 February 2004; *Bizimungu et al.*, Decision on the Prosecution Motion for Certification to Appeal the Chamber’s Decision of 26 January 2004 (TC), dated 20 February 2004, filed 23 February 2004.



**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

**GRANTS** the said Motion.

Arusha, 24 March 2004



Khalida Rachid Khan

