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24-03-04
(12624-12621)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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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 ACCUSED MUGIRANEZA'S MOTION FOR
CERTIFICATION TO APPEAL THE CHAMBER'S DECISION OF 5
FEBRUARY 2004**

Office of the Prosecutor:

Paul Ng'arua
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Justus Bwonwonga
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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 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 “Prosper Mugiraneza’s Motion Pursuant to Rule 73(C) for Leave to Appeal the Trial Chamber’s Decision of 5 February 2004 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” filed on 12 February 2004, (the “said Motion”);

NOTING the “Prosecutor’s Response to a Request by Prosper Mugiraneza 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 18 February 2004, (the “Response”).

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 Parties

2. The Defence seeks, pursuant to Rule 73(B) and 73(C) of the Rules certification by the Trial Chamber for leave to appeal the Trial Chamber’s Decision of 5 February 2004¹ (the “Impugned Decision”).

¹ *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



3. The Defence contends that the Trial Chamber erred in law by granting dissimilar relief to Accused Prosper Mugiraneza in the Impugned Decision than it did to co-defendant Casimir Bizimungu in a similar Motion (the "Bizimungu Decision")² rendered in this Trial.

4. At the essence of the Defence submissions is the fact that, in its opinion, the Bizimungu Decision excluded all evidence to be led against Casimir Bizimungu where there was insufficient precision as to factual allegations in the indictment, whereas in the Impugned Decision, the Prosecution has been allowed to lead evidence relating to Conspiracy and Complicity in Genocide. The Defence feels that this violates the principle of *stare decisis*, and also the principle that like persons should be treated alike.

5. The Defence further submits that the Trial Chamber, in allowing the Prosecution to lead evidence on charges of Conspiracy and Complicity in Genocide in relation to acts of the Accused in Kibungo and Cyangugu prefectures, erred in law, as alleged acts of misconduct not charged in the Indictment as crimes, including a concise statement of fact of the case, are irrelevant and should be excluded.

6. The Prosecution reminds the Trial Chamber of its own pending Motion for certification to appeal the same Decision of the Trial Chamber,³ wherein it is clear that the Prosecution felt that the evidence should not have been excluded at all.

HAVING DELIBERATED

7. The Trial Chamber recalls its recent Decisions in relation to requests for certification to Appeal pursuant to Rule 73 (B).⁴ 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.

² *Bizimungu et al.*, Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA (TC), dated 23 January 2004, filed 26 January 2004

³ 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.

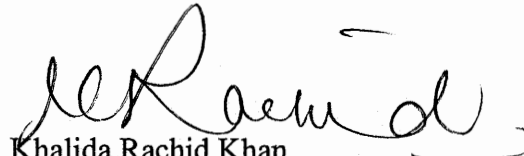
⁴ *Bizimungu et al.*, Decision on the Prosecution Motion for Certification to Appeal the Chamber's Decision of 3 February 2004 (TC), dated 20 February 2004, filed 23 February 2004; *Bizimungu et al.*, Decision on the Prosecution Motion for Certification to Appeal the Chamber's Decision of 26 January 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
Judge

