



UNITED NATIONS
NATIONS UNIES

ICTR-01-70-ARG5(D) 2
26 January 2004
(195bis/A-193bis/A)
International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

195bis/A

BEFORE A BENCH OF THREE JUDGES OF THE APPEALS CHAMBER

Case No. ICTR-2001-70-AR65 (D). 2

ENGLISH
Original: FRENCH

Composed as follows: Judge Mehmet Güney, presiding
Judge Fausto Pocar
Judge Inés Mónica Weinberg de Roca

Registrar: Adama Dieng

Decision of: 28 April 2004

2004 JAN 26 12:00
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EMMANUEL RUKUNDO

v.

THE PROSECUTOR

**DECISION ON REQUEST FOR LEAVE TO FILE AN APPEAL
(PROVISIONAL RELEASE)**

Counsel for the Defence:
Philippe Moriceau
Wenceslas Habiyaemye

Office of the Prosecutor:
Silvana Arbia

A08-0040 (E)

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Translation certified by LSS, ICTR

THE BENCH OF THREE JUDGES OF 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 1994 and 31 December 1994 (the “International Tribunal”),

CONSIDERING the “Decision on Appeal from the Decision of Trial Chamber III of 18 August 2003 denying Application for Provisional Release” rendered on 8 March 2004, in which the Appeals Chamber granted the Applicant’s request by quashing the Trial Chamber’s Decision of 18 August 2003¹ and ordered the remittance of the application for provisional release to the full Trial Chamber for its decision;

BEING SEISED of the “*Requête en extrême urgence aux fins d’autorisation d’interjeter appel de la décision de la Chambre de Première Instance du 18 mars 2004 rejetant la demande de libération provisoire*” filed on 24 March 2004 by Emmanuel Rukundo himself (the “Appellant”) pursuant to Rule 65(D) of the Rules of Procedure and Evidence of the International Tribunal (the “Rules”), applying for leave to appeal the “Decision on Defence Motion for his Provisional Release” rendered by Trial Chamber III on 18 March 2004 (the “Impugned Decision”);

NOTING that the “Prosecutor’s Response to Rukundo’s Motion for Leave to Appeal the Decision of 18 March 2004” was filed by the Prosecutor on 8 April 2004, that is, outside the time limit prescribed by paragraph 5 of the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the Tribunal of 16 September 2002 (IT 155 Rev.1);

WHEREAS the Impugned Decision was rendered pursuant to Rule 65 of the Rules;

WHEREAS, pursuant to Rule 65(D) of the Rules, a decision rendered by the Trial Chamber within the meaning of this Rule is subject to appeal upon a showing of good cause;

WHEREAS there is “good cause” within the meaning of Rule 65(D) of the Rules to grant the application for leave to appeal when it appears that the Trial Chamber may have erred in rendering the Impugned Decision;²

WHEREAS the Appellant advances the following arguments in support of his application:

- (i) The Trial Chamber erred in not taking into account the filings exchanged on appeal;
- (ii) The excessive duration of detention on remand justifies the provisional release;
- (iii) The Trial Chamber erred in burdening the Appellant with the steps to be taken with regard to the country where he wished to be provisionally released;

¹ *Emmanuel Rukundo v. The Prosecutor*, 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, 18 August 2003.

² See *Emmanuel Rukundo v. The Prosecutor*, Decision on Appeal from the Decision of Trial Chamber III of 18 August 2003 denying Application for Provisional Release, 8 March 2004. See also ICTY, *Prosecutor v. Limaj et al.*, IT-03-66-AR65, Decision on Limaj Request for Provisional Release, 31 October 2003, paras. 6-7.

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CONSIDERING that, although the Trial Chamber is required to consider all the evidence before it in order to rule on the application for provisional release, the filings mentioned by the Appellant were filed before the Appeals Chamber as part of the appeal proceedings, and were not filed before the Trial Chamber;

CONSIDERING that, even though the long period of the Appellant's detention on remand may be considered excessive, it does not *per se* constitute a sufficient ground to justify provisional release;³

CONSIDERING that nothing in the provisions of Rule 65 of the Rules indicates that the accused must, as a prerequisite for his provisional release, provide material proving that the country where he wishes to be provisionally released will receive him, or guarantees from such country that he will appear for trial,⁴ but that the Appellant must, nevertheless, convince the Trial Chamber that, if released, he will appear for trial before the International Tribunal when so required;

WHEREAS the Trial Chamber denied the application for provisional release on the ground that it was not certain that the Appellant would appear for trial if he was provisionally released;

CONSIDERING therefore that it does not appear that the Trial Chamber erred in rendering the Impugned Decision;

RECALLING nevertheless that nothing in the provisions of Rule 65 of the Rules stops the Appellant from filing a new application for provisional release before the Trial Chamber, which application will be accompanied by all the documents to convince the Trial Chamber that, if released, the Appellant would appear for trial and would not pose a danger to any victim, witness or other person;

FOR THESE REASONS,

DENIES the leave to appeal the Impugned Decision.

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

[Signed]

Judge Güney
Presiding Judge

Done on 28 April 2004 at The Hague (The Netherlands).

[Seal of the International Tribunal]

³ *Joseph Kanyabashi v. The Prosecutor*, "Arrêt (relatif à la demande d'autorisation de déposer un pourvoi en appel, formée sur le fondement de l'article 65 D) du Règlement de procédure et de preuve", 13 June 2001, p. 3.

⁴ See ICTY, *Prosecutor v. Vidoje Blagojević, Dragan Obrenović and Dragan Jokić*, Decision on Application by Dragan Jokić for Leave to Appeal, 18 April 2002, paras. 7-9.