



ICTR-99-50-T
24-02-2005
(20419-20415)

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, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr Adama Dieng

Date: 24 February 2005

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

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**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR LEAVE TO
APPEAL FROM THE TRIAL CHAMBER'S DECISION OF 3 NOVEMBER 2004**

Office of the Prosecutor:

Mr Paul Ng'arua
Mr Ibukunolu Babajide
Mr Justus Bwonwonga
Mr Elvis Bazawule
Mr Shyamlal Rajapaksa

Counsel for the Defence:

Ms Michelyne C. St. Laurent and Ms Alexandra Marcil for **Casimir Bizimungu**
Mr Ben Gumpert for **Justin Mugenzi**
Mr Pierre Gaudreau and Mr Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr Tom Moran for **Prosper Mugiraneza**

[Signature]

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

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga and Judge Emile Francis Short (the “Trial Chamber”);

BEING SEIZED of “Prosper Mugiraneza’s Motion for Certification to Appeal from the Trial Chamber’s Decision of 3 November 2004 on Prosper Mugiraneza’s Motion for a Hearing or Other Relief on His Motion for Dismissal for Violation of his Right to Trial Without Undue Delay” filed on 10 November 2004 (the “Motion”);

CONSIDERING the “Prosecution’s Response to Prosper Mugiraneza’s Motion for Certification to Appeal from the Trial Chamber’s Decision of 3 September [sic] 2004 on Prosper Mugiraneza’s Motion for a Hearing or Other Relief on His Motion for Dismissal for Violation of his Right to Trial Without Undue Delay Dated 9 November 2004” filed on 17 November 2004 (the “Response”);

RECALLING the Trial Chamber’s Decision of 3 November 2004 (the “Impugned Decision”);¹

ARGUMENTS OF THE PARTIES

Defence Submissions

1. The Defence seeks certification to appeal the Impugned Decision pursuant to Rule 73(B) of the Rules of Procedure and Evidence (the “Rules”) in relation to the following five issues:
 - i. Whether the Trial Chamber erred in failing to apply the five-part test set out by the Appeals Chamber in its Decision of 27 February 2004;
 - ii. Whether the Trial Chamber erred in failing to issue a reasoned Decision considering all parts of the five-part test set out by the Appeals Chamber in its Decision of 27 February 2004;
 - iii. Whether the Chamber erred in Paragraph 32 of its Decision by giving evidentiary value to “proof put forward by the Prosecutor that the delay in this case, if any, was not attributable to the OTP” when other than a few quotations from the record related to systematic causes for delay, the Prosecutor put forward no evidence in its response;
 - iv. Whether the Trial Chamber erred in law in Paragraph 33 of its Decision by basing its decision on whether the delay prejudiced Mugiraneza to the extent that it prevented a

¹ *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza’s Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of his Right to Trial Without Undue Delay (TC), 3 November 2004.



fair trial rather than whether the delay in the trial violated Mugiraneza's independent right to a trial without undue delay;

- v. Whether the Trial Chamber erred in law in Paragraph 33 of its Decision by holding that the accused must show prejudice in order to be entitled to relief for violation of his right to a trial without undue delay.²

2. The Defence submits that the Trial Chamber should certify leave to appeal on these issues since it has already found in a previous Decision that the issues raised meet the requirements of Rule 73(B) and certified it for appeal. It submits that nothing has changed.

Prosecution Submissions

3. The Prosecution opposes the Motion, and requests the Trial Chamber not to grant certification to appeal the Impugned Decision.

4. The Prosecution submits that the jurisprudence of the Tribunal makes it clear that certification under Rule 73(B) is to be granted only sparingly. It cites a Decision in the *Nyiramasuhuko* case to support this contention.³ According to the Prosecution's interpretation of this Decision, the factors that tribunals have taken into account in determining whether an interlocutory appeal is called for is (i) the importance of the issue; (ii) Whether or not the Appeals Chamber has provided any guidance on the issue; And (iii) whether there are conflicting approaches among Trial Chambers.⁴

5. It is submitted by the Prosecution that the Defence's main contention is that the Trial Chamber grounded the Impugned Decision on an erroneous understanding of the Appeals Chamber Decision of 27 February 2004. The Prosecution objects to this contention.

6. The Prosecution submits that the issue has already been dealt with by the Trial Chamber in the Impugned Decision, and the proceedings would not be materially advanced by certifying this appeal.

HAVING DELIBERATED

7. Rule 73(B) governing the certification of interlocutory appeals provides as follows:

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

² *Motion*, para. 1

³ *Prosecutor v. Pauline Nyiramasukuko et al.*, Case No. ICTR-97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the "Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible" (AC), 18 March 2004, paras. 14-15.

⁴ *Response*, para. 15.

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.

8. The Rule is clear with regard to the exceptional nature of the procedure. In the *Nyiramasuhuko* case cited by the Prosecution, the bench stated:⁵

As a general observation, it must be noted that the general rule in Rule 73(B) remains this: 'Decisions rendered on such motions are without interlocutory appeal.' This general rule is consistent with some important national jurisdictions around the world in which interlocutory appeals are not allowed in criminal cases, or allowed only in very limited circumstances. Rule 73(B) of the Rules provides, however, that in exceptional circumstances, the Trial Chamber may—not must—allow interlocutory appeals of such decisions.

The Decision of the Chamber in this case is in conformity with the jurisprudence of the Appeals Chamber and the Trial Chamber approves of its reasoning.

9. The Defence argues the substance of its intended appeal in some detail. Rule 73(B) has been interpreted by the Trial Chamber on several occasions. The Trial Chamber reminds the Defence that it is not the substance of the appeal which guides the Chamber in determining whether or not certification should be allowed. For certification to be granted two criteria must be met: the issue at stake must significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial and an immediate resolution of this issue by the Appeals Chamber should materially advance the proceedings. Furthermore, the onus for making this demonstration rests with the applicant.

10. The Trial Chamber determines that an immediate resolution of this issue by the Appeals Chamber would not materially advance the proceedings. The Trial Chamber has already reconsidered its Decision of 2 October 2003 pursuant to the guidance given by the Appeals Chamber in its Decision on 4 October 2004. The issue is settled.

11. The Trial Chamber does not find that the conditions for certification under Rule 73 (B) have been met and denies the application.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

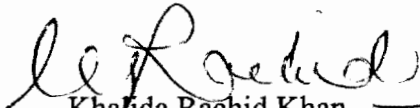
⁵ *Prosecutor v. Nyiramasuhuko*, ICTR-97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motion for Certification to Appeal the 'Decision on Defence Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ inadmissible', 18 March 2004, at para. 14 [original footnotes omitted].

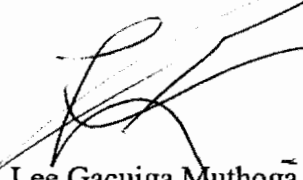


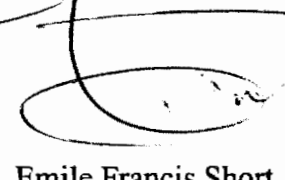
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DENIES the Motion in its entirety.

Arusha, 24 February 2005


Khafida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Emile Francis Short
Judge

(Seal of the Tribunal)