



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
07-04-05
(19743-19741)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

19743
num

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Seon Ki Park

Registrar: Mr Adama Dieng

Date: 6 April 2005

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The PROSECUTOR

v.

Augustin BIZIMUNGU
Augustin NDINDILIYIMANA
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

**DECISION ON NDINDILIYIMANA'S REQUEST FOR CERTIFICATION OF
APPEAL FROM THE DECISION DATED 24 SEPTEMBER 2004 DISMISSING
APPLICANT'S REQUEST FOR TRANSFER OF HIS TRIAL TO A NATIONAL
JURISDICTION**

Office of the Prosecutor:

Mr Ciré Aly Bâ
Mr Alphonse Van
Ms Ifeoma Ojemeni Okali
Mr Segun Jegede
Mr Abubacarr Tambadou
Ms Faria Rekkas (Case Manager)
Ms Anne Pauline Bodley (Case Manager)

Counsel for the Defence:

Mr Gilles St. Laurent and Mr Ronnie Mac Donald for **Augustin Bizimungu**
Mr Christopher Black and Ms Tiphaine Dickson for **Augustin Ndindiliyimana**
Mr André Ferran and Ms Danielle Girard for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

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

SITTING as Trial Chamber II, composed of Judge Asoka de Silva, Presiding, Judge Taghrid Hikmet and Judge Seon Ki Park (the “Chamber”);

BEING SEISED OF “Ndindiliyimana’s Request for Certification of Appeal from the Decision of Trial Chamber Dated September 24, 2004 Dismissing Applicant’s Request For Transfer of his Trial to a National Jurisdiction”, filed on 8 March 2005 (the “Motion”);

NOTING that the Prosecutor has not filed a response to the Motion;

RECALLING the Chamber’s “Decision on Defence Motions for Stay of Proceedings and for Adjournment of the Trial, Including Reasons in Support of the Chamber’s Oral Ruling Delivered on Monday 24 September 2004” (the “Impugned Decision”);

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure and Evidence (the “Rules”) in particular Rules 73(B) and (C) of the Rules;

HEREBY DECIDES the Motion on the basis of the written brief filed by the Defence pursuant to Rule 73(A) of the Rules.

SUBMISSIONS BY THE DEFENCE

1. The Defence requests for certification to appeal the Impugned Decision pursuant to Rule 73(B). The Defence submits that it has waited to the date of this request for a copy of the Impugned Decision in French in order for the Accused to be able to fully consult with counsel.
2. The Defence further submits that despite several requests by Counsel for a copy of this Decision in French, and the request of the Presiding Judge to the Registry that Counsel be provided with a copy in French, it has not been forthcoming.
3. The Defence argues that the Impugned Decision shows a total lack of supporting reasons and amounts to a denial of natural justice. Instead, the Chamber chose to ignore and evade the cogent and compelling evidence placed before it with the result that the principles of natural justice have been violated.
4. The Defence therefore submits that the Chamber’s decision significantly affects the fair and expeditious conduct of the proceedings and the outcome of the trial.

DELIBERATIONS

5. The Chamber notes that the request for certification was filed on 8 March 2005, more than five months after the Impugned Decision was delivered. The Chamber recalls the provision in Rule 73(C), which in relevant part, states: “Requests for certification shall be filed within seven days of the filing of the impugned decision”.




6. The Chamber has thoroughly reviewed the records of proceedings from 24 September to 4 October 2004. The Chamber wishes to note that from the record, it is clear that Mr Croisier, then Counsel for Bizimungu, had requested the translation of the Impugned Decision and asked that time should not run against his client until such translation was provided.¹ However, there is nothing on record to show that such a request for an extension of time was made on behalf of the Accused Ndindiliyimana.

7. The Chamber considers that the request for certification was therefore filed out of time and dismisses it.

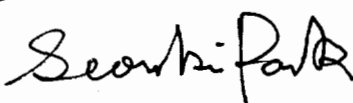
FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Defence Motion in its entirety.

Arusha, 6 April 2005


Asoka de Silva
Presiding Judge


Taghrid Hikmet
Judge


Seon Ki Park
Judge



¹ T. 30 September 2005, p. 5