



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
2-12-2005
(24716-24713)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

24716
24713
R

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Emile Francis Short
Gberdao Gustave Kam

Registrar: Adama Dieng

Date: 2 December 2005

THE PROSECUTOR

v.

Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

2005-12-02
10:10:00
ICTR

CERTIFICATION OF APPEAL CONCERNING JUDICIAL NOTICE

Rule 73 (B) of the Rules of Procedure and Evidence

Office of the Prosecutor:

Don Webster
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Dior Diagne Mbaye and Félix Sow

Defence Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Defence Counsel for Joseph Nzirorera
Peter Robinson

SP

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

SITTING as Trial Chamber III, composed of Judges Dennis C. M. Byron, Presiding, Emile Francis Short and Gberdao Gustave Kam (the “Chamber”);

BEING SEIZED of the Prosecution “Motion for Certification to Appeal Trial Chamber’s Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts dated 9 November 2005”, filed on 15 November 2005 (the “Motion”);

CONSIDERING “Joseph Nzirorera’s Response to Application for Certification to Appeal Decision on Judicial Notice and Motion for Reconsideration”, filed on 18 November 2005 (“Nzirorera’s Response”) and the Prosecution’s Reply thereto, filed on 21 November 2005;

CONSIDERING also the “Mémoire de M. Ngirumpatse sur la Application for Certification to Appeal on Judicial Notice of Facts of Common Knowledge and Adjudicated Facts”, filed on 21 November 2005 (“Ngirumpatse Joinder”) and the Prosecutor’s Reply thereto, filed on 24 November 2005;

NOTING the Decision of this Chamber on the Prosecutor’s Motion for Judicial Notice, dated 9 November 2005, as well as the Prosecutor’s Motion for Judicial Notice of 30 June 2005 and the relevant Annexes to that Motion;

HEREBY DECIDES the Motion pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the “Rules”).

INTRODUCTION

1. On 9 November 2005, the Chamber rendered its Decision on the “Prosecutor’s Motion for Judicial Notice of Facts of Common Knowledge and Adjudicated Facts” (the “impugned Decision”). As a result of that Decision, the Chamber took judicial notice of two facts of common knowledge and denied all other aspects of the request for judicial notice. The Prosecution applies to the Chamber for certification to appeal the impugned Decision on its merits, pursuant to Rule 73 (B) of the Rules of Procedure and Evidence (the “Rules”).

2. On 30 November 2005, the Defence for Ngirumpatse filed a “Duplique” to the Prosecutor’s Reply to Ngirumpatse’s Joinder. The Chamber has not considered the submissions contained in that document in this Decision. The Chamber is of the view that filings under Rule 73 cannot continue indefinitely. The Rules do not provide a basis for Parties to respond to each other’s submissions indefinitely, nor is it in the interests of justice or judicial economy for the Chamber to allow parties to do so.

DISCUSSION

Certification to Appeal – Rule 73(B)

3. Under Rule 73 (B), certification to appeal is an exception to the general principle that Decisions rendered under Rule 73 are ‘without interlocutory appeal’. In order to fall within that exception, the applicant must satisfy two conditions. Firstly, it must show that the Decision involves an issue which would significantly affect (a) the fair and expeditious conduct of the proceedings, or (b) the outcome of the trial. Secondly, it must show that an immediate resolution by the Appeals Chamber may materially advance the proceedings. The

Prosecution advances a number of issues which it submits are raised by the impugned Decision, all of which, it submits satisfy both criteria to invoke an exercise of the Chamber's discretion under Rule 73 (B). The Defence for Nzirorera submits that the Prosecution has satisfied neither criterion with respect to any of the issues raised by it.

4. One of the issues raised by the impugned Decision which the Prosecution submits satisfies the criteria to invoke an exercise of the Chamber's discretion is the Chamber's refusal to take judicial notice of a number of facts, as adjudicated facts, on the basis that they might go directly or indirectly to the guilt of the Accused, notably in relation to the pleading of their participation in a joint criminal enterprise. It submits that, if interpreted widely, no fact could be judicially noticed as, presumably, most facts introduced by the Prosecution will go towards proving, either directly or indirectly, the guilt of the accused.

5. The Chamber is of the view that this issue satisfies both criteria for certification. Firstly, this issue would significantly affect the expeditious conduct of the proceedings. It is clear that, if the Appeals Chamber ultimately shared the viewpoint of the Prosecution, and judicial notice was taken of the facts concerned, witness testimony could be reduced in terms of the number of witnesses called and the scope of those witnesses' testimonies. Furthermore, at the crux of Rule 94 of the Rules is the concept of judicial economy and expediency, and, as such, the scope of its application goes to the heart of the concepts of fairness and expediency. Secondly, this Chamber holds the view that an immediate resolution by the Appeals Chamber of this issue may materially advance the proceedings. The impact of an Appeals Chamber decision in the Prosecution's favour upon the Prosecution's witness list would reduce trial time and the parties would be able to focus on the salient issues in the trial. Furthermore, and with reference to the *Bagosora* Decision of 29 July 2005, the determination of this issue by the Appeals Chamber has the potential to affect the admissibility of broad categories of evidence, or crucial matters of procedure or evidence,¹ thereby having potential implications for the methods of proof in the case before this Chamber, as well as in other matters before this Tribunal.

6. Finally, in relation to the Defence for Nzirorera's application for reconsideration of that part of the impugned Decision which took judicial notice of a fact of common knowledge in wording slightly different from that contained in the Prosecution's Motion for Judicial Notice, the Chamber finds that the Defence has failed to show that the test for reconsideration has been met in this case.

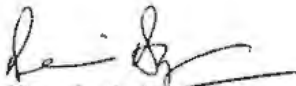
FOR THOSE REASONS

THE CHAMBER

GRANTS certification of an interlocutory appeal under Rule 73 (B) from the Chamber's "Decision on the Prosecutor's Motion for Judicial Notice", dated 9 November 2005.


¹ *Prosecutor v. Bagosora et al*, Certification of Appeal Concerning Access to Protected Defence Witness Information, 29 July 2005, para. 2.

Arusha, 2 December 2005, done in English.


Dennis C. M. Byron
Presiding


Emile Francis Short
Judge

[Seal of the Tribunal]


Gberdao Gustave Kam
Judge