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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

142-00-55A-T
12-05-2006
(3360-3357)

Before: Judge Asoka de Silva, Presiding
Judge Flavia Lattanzi
Judge Florence Rita Arrey

Registrar: Mr Adama Dieng

Date: 12 May 2006

THE PROSECUTOR

V.

THARCISSE MUVUNYI

ICTR-2000-55A-T

2006 MAY 12 P. 12: 17
JUDGE DE SILVA
10:11 AM
SECRETARIES

REASONS FOR THE ORAL DECISION ON MUVUNYI'S MOTION FOR
CERTIFICATION TO APPEAL THE CHAMBER'S DECISION OF 26 APRIL 2006

Office of the Prosecutor

Counsel for the Accused Person

Mr Charles Adeogun-Phillips, Senior Trial Attorney
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Mr Dennis Mabura, Case Manager

Mr William E. Taylor, Lead Counsel
Ms Cynthia Cline, Legal Assistant

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

SITTING as Trial Chamber II composed of Judge Asoka de Silva, Presiding, Judge Flavia Lattanzi and Judge Florence Rita Arrey (the “Chamber”);

BEING SEIZED of the “Accused’s Motion for Certification to Appeal the Decision of April 26, 2006 Pursuant to Rule 73”, filed on 2 May 2006 (the “Motion”);

HAVING RECEIVED the “Prosecutor’s Response to Accused’s Motion for Certification to Appeal the Decision of April 26, 2006 Pursuant to Rule 73”, filed on 4 May 2006 (the “Response”);

RECALLING its “Decision on the Prosecutor’s Motion Pursuant to Trial Chamber’s Directive of 7 December 2005 for Verification of Evidence Obtained out of Court Pursuant to Rules 89(C) and (D)”, rendered on 26 April 2006 (the “Impugned Decision”);

RECALLING FURTHER its Oral Decision of 8 May 2006 granting the Defence Motion for Certification of Appeal pursuant to Rule 73(A) of the Rules and indicating that the written reasons would soon follow (the “Oral Decision”);¹

NOW PROVIDES THE REASONS for such Oral Decision on the basis of written submissions filed by the Parties.

SUBMISSIONS OF THE PARTIES

The Defence

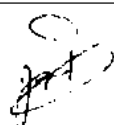
1. The Defence requests the Chamber to certify an appeal against the Decision of 26 April 2006 in which the Chamber granted the Prosecution leave to present the evidence of a handwriting expert with regard to the signatures appearing on certain documents admitted for identification purposes only. The Defence submits that by granting the Prosecution motion, the Chamber erred and that it “confused and mixed the principles of evidence admissibility in Rule 89 and the order of presentation of evidence in Rule 85.”² The Defence further submits that the Chamber “abused its discretion in that it misdirected itself as to the principle of law to be applied” and “by failing to give sufficient weight to the order of trial set out in Rule 85 and the underlying reason for that policy.”³
2. Quoting at length from a decision by the *Celebici* Trial Chamber at the ICTY, the Defence argues that “the order of presentation set out in Rule 85 is based on the principle that matters probative of the defendant’s guilt should be adduced during the Prosecutor’s case-in-chief.”⁴ According to the Defence, the Impugned Decision unfairly grants the Prosecution the opportunity to reopen its case, since the documents in question have long

¹ On 8 May 2006, prior to hearing the testimony of the handwriting expert, the Chamber rendered an Oral Decision granting the Defence Motion for Certification and stating that these written reasons would soon follow.

² Para. 2 of the Defence Motion.

³ Para. 10 of the Motion.

⁴ Para. 5. b. of the Motion.



been in the Prosecution's possession and the proposed testimony of the handwriting expert could have been adduced earlier through the exercise of reasonable diligence.⁵

3. The Defence asserts that the Impugned Decision satisfies the criteria for certification because it "clearly affects the fair and expeditious conduct of the proceedings"⁶ and because an "immediate decision by the Appeals Chamber would materially advance the proceeding by preventing the introduction of inadmissible evidence".⁷

The Prosecution

4. The Prosecution submits that the reasoning underlying the Defence request for certification is "misguided."⁸ According to the Prosecution, in the Impugned Decision, the Chamber "gave sufficient weight to the order of trial set out in Rule 85"⁹ and "accurately deals with issues relating to Rule 89(C)".¹⁰ The Prosecution further submits that even if the Chamber erred by granting leave to call the handwriting expert, the Defence still "bears the onus of demonstrating how such an error would significantly affect the fair and expeditious conduct of the proceedings or that its immediate resolution would materially advance the proceedings".¹¹ In the view of the Prosecution, the Impugned Decision was sound and the Defence request for certification should be denied.¹²

HAVING DELIBERATED

5. The Chamber recalls the provisions of Rule 73(B) pursuant to which it may grant certification of an interlocutory appeal if the following two criteria are satisfied:
 - i the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and
 - ii in the Chamber's opinion, an immediate resolution by the Appeals Chamber may materially advance the proceedings.
6. The Chamber further recalls that during the cross-examination of Defence Witness Augustin Ndingiyimana on 7 December 2005, the Prosecution attempted to tender into evidence certain documents purportedly bearing the signature of the Accused and identifying him as the *Commandant de place* of Butare and Gikongoro *préfectures*.¹³ On that occasion, because the witness was unable to identify the signature and seal on the documents, the Chamber refused to admit them as exhibits. Instead, the Chamber admitted the documents for identification purposes only as "PID1".¹⁴ The Chamber also directed that the Prosecution could prove the authenticity of the documents by calling ~~other witnesses.~~¹⁵

⁵ Paras. 11-12, 16 of the Motion.

⁶ Para. 20 of the Motion.

⁷ Para. 21 of the Motion.

⁸ Para. 7 of the Prosecution Response.

⁹ Para. 8 of the Response.

¹⁰ Para. 8 of the Response.

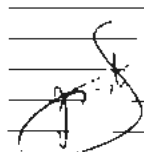
¹¹ Para. 14 of the Response.

¹² Para. 16 of the Response.

¹³ See the Transcript of the Proceedings, 7 December 2005, pp. 26-40 (English)

¹⁴ T. 7 December 2005, p. 34 (English).

¹⁵ T. 7 December 2005, p. 34 (English).



The Prosecutor v. Tharcisse Muvunyi, ICTR-2000-55A-T

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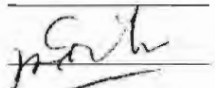
7. In a subsequent written Decision, the Chamber again denied a Prosecution request to admit as exhibits the documents contained in PID1, noting that although the documents appeared at face value to be relevant to this case, they lacked *prima facie* reliability.¹⁶ Relying on the Chamber's directive of 7 December 2005, the Prosecution filed a motion seeking leave to call a handwriting expert to testify to the authenticity of the documents contained in PID1. It is the Chamber's Decision of 26 April 2006 granting the Prosecution request that gave rise to this Defence Motion for certification of appeal.
8. With respect to the criteria for granting certification, the Chamber notes that the allegation that Muvunyi was the *Commandant de place* of Butare and Gikongoro *préfectures* has been very seriously disputed throughout these proceedings. On the one hand, the allegation has constituted an important aspect of the Prosecution case. On the other hand, the Defence has consistently denied the allegation and has repeatedly challenged all attempts to introduce the said documents. Because the Impugned Decision allowed the Prosecution to call a handwriting expert to verify the signatures on the documents, it would have an impact on the rest of these proceedings. To that extent, the Chamber considers that the Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings. Thus, the first criterion for certification is satisfied.
9. The Chamber is also of the view that an immediate resolution by the Appeals Chamber may materially advance the proceedings, especially during the Chamber's evaluation of the evidence in the context of the final judgement. Therefore, the second criterion for certification has also been met.

FOR THE FOREGOING REASONS, THE CHAMBER

GRANTED the Defence Motion and

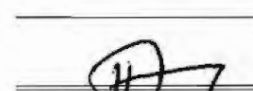
CERTIFIED an appeal against the Decision of 26 April 2006.

Arusha, 12 May 2006


Asoka de Silva
Presiding Judge


Flavia Lattanzi
Judge

[Seal of the Tribunal]


Florence R. Afrey
Judge

¹⁶ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A, "Decision on the Prosecutor's Motion to Admit Documents Tendered During the Cross-Examination of Defence Witness Augustin Ndirihyimana", 28 February 2006, para 19.

¹⁷ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A, "Decision on the Prosecutor's Motion Pursuant to Trial Chamber's Directives of 7 December 2005 for the Verification of the Authenticity of Evidence Obtained out of Court Pursuant to Rules 89 (C) & (D)", 26 April 2006.