



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-01-63-PT  
13-9-2006

1287  
-mm

(1287-1285)

Or: ENG

TRIAL CHAMBER III

**Before:** Judge Dennis C. M. Byron, Presiding  
Judge Florence Rita Arrey  
Judge Gberdao Gustave Kam

**Registrar:** Adama Dieng

**Date:** 13 September 2006

JUDICIAL RECORDS/ARCHIVES  
DIRECTOR

2006 SEP 13 P 4: 04

THE PROSECUTOR

v.

Siméon NCHAMIHIGO

Case No. ICTR-2001-63-PT

**DECISION ON REQUEST FOR CERTIFICATION OF APPEAL ON TRIAL  
CHAMBER P'S DECISION GRANTING LEAVE TO AMEND THE INDICTMENT**

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

**Office of the Prosecutor:**

Alphonse Van  
Lloyd Strickland  
Madeleine Schwarz  
Adama Niane  
Anne Bodley

**Defence Counsel:**

Denis Turcotte  
Benoît Henry

## INTRODUCTION

1. The trial in the instant case is scheduled to begin on 25 September 2006. On 17 July 2006, Trial Chamber I granted in part the Prosecution request for leave to amend the Indictment ("Impugned Decision"). The Amended Indictment was filed by the Prosecution on 18 July 2006<sup>1</sup> and a further appearance for the Accused, along with a Status Conference, took place on 7 August 2006. The Defence has now applied for certification to appeal the Impugned Decision.<sup>2</sup>

## DISCUSSION

2. Rule 73(B) of the Rules of Procedure and Evidence provides that a Trial Chamber may grant certification to appeal when (i) there is an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and (ii) that an immediate resolution by the Appeals Chamber may materially advance the proceedings. These two conditions are cumulative and are not determined on the merits of the appeal against the impugned Decision.<sup>3</sup>

3. The two main errors alleged by the Defence are 1) that the Trial Chamber allowed some of the Prosecution's amendments because they were mischaracterized as clarifications and specifications instead of new charges and as such, erred when it concluded that the Accused will have adequate time to prepare his Defence, and 2) that the Trial Chamber erred when it concluded that the tardiness of the Prosecution's Motion under the circumstances did not cause any prejudice to the Accused. The Defence believes that because the Impugned Decision has violated the right of the Accused to be tried without undue delay and his right to adequately prepare his defence as guaranteed by Article 20(4) of the Statute, it constitutes an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.

4. The Defence asserts that an immediate resolution by the Appeals Chamber will materially advance the proceedings because the Accused will then know what the exact charges are against him before the start of trial. It relies on the Trial Chamber's decision in *Muvunyi* of 16 March 2005 which granted certification to appeal in a similar situation.<sup>4</sup>

5. The Prosecution opposes the Motion and states that the Defence has not made any arguments that touch upon an issue which might affect the fair and expeditious conduct of the proceedings.

6. Certification to appeal a Trial Chamber's decision is only granted in exceptional circumstances.<sup>5</sup> According to the Appeals Chamber in *Muvunyi*, a Trial Chamber's decision

<sup>1</sup> The Prosecution filed a Corrigendum to the 18 July 2006 Indictment on 25 July 2006 containing only technical changes to the Indictment.

<sup>2</sup> Filed on 20 July 2006; response filed 31 July 2006.

<sup>3</sup> *Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Defence Motions for Certification to Appeal Decision Granting Special Protective Measures for Witness ADE (TC), 7 June 2006, para. 5.

<sup>4</sup> *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-AR73., Decision on the Prosecutor's Motion for Certification to Appeal the Decision Denying Leave to File an Amended Indictment and for Stay of Proceedings (TC), 16 March 2005.

<sup>5</sup> See for example: *Prosecutor v. Arsène Shalom Ntahobali and Pauline Nyiramasuhuko*, Case No. ICTR-97-21-T, Decision on Ntahobali's and Nyiramasuhuko's Motions for Certification to Appeal the 'Decision on Defence

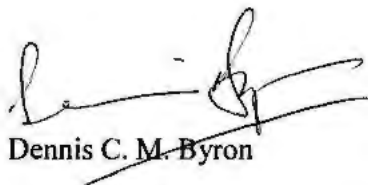
on a Motion to Amend the Indictment is an exercise of judicial discretion which, when done at a late stage of the trial process, must be considered in the context of potential prejudice to the accused.<sup>6</sup> The resulting decision can only be interfered with if the moving party proves a discernable error on the part of the Trial Chamber.<sup>7</sup>

7. Although an issue with the Indictment could be considered to significantly affect the fair conduct of the proceedings, the Chamber finds that the solutions to the errors alleged by the Defence will not expedite the conduct of the proceedings, nor will an immediate resolution be likely to materially advance the proceedings. In the *Muvunyi* case, even when the Appeals Chamber determined that the Trial Chamber mischaracterized amendments or potential amendments to the Indictment, as alleged here, those mischaracterizations did not affect the overall outcome of the impugned decision.<sup>8</sup> Similarly, in this case, there is no real challenge to the amendments, which are the basis of the decision, but that the result of adding those additions cause prejudice to the Accused because they were not done in a timely manner and he will not have sufficient time to prepare his defence. When a specific scenario arises, the Defence can move the Chamber for additional time to prepare its case in order to preserve the rights of the Accused to a fair trial. Consequently, the Chamber finds that Defence has not satisfied the standard for certification to appeal the Impugned decision.

**FOR THOSE REASONS, THE CHAMBER**

**DENIES** the Motion.

Arusha, 13 September 2006, done in English.



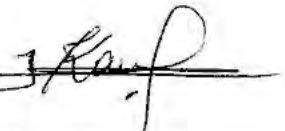
Dennis C. M. Byron

Presiding Judge



Florence Rita Arrey

Judge



Gberdao Gustave Kam

Judge

[Seal of the Tribunal]



Urgent Motion to Declare Parts of the Evidence of Witnesses RV and QBZ Inadmissible' (TC), 18 March 2004, para. 15.

<sup>6</sup> *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-AR73, Decision on Prosecution Interlocutory Appeal Against Trial Chamber II Decision of 23 February 2005 (AC), 12 May 2005, paras. 5, 21.

<sup>7</sup> *Id.* at para. 5.

<sup>8</sup> *Id.* at para. 56.