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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 10 May 2007

THE PROSECUTOR

v.

Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU

Case No. ICTR-00-56-T

JUDICIAL RECORDS ARCHIVES
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**DECISION ON BIZIMUNGU'S MOTION FOR CERTIFICATION TO APPEAL THE
CHAMBER'S "DECISION ON DEFENCE MOTION TO RECALL PROSECUTION
WITNESS AOE FOR ADDITIONAL CROSS-EXAMINATION"**

Office of the Prosecutor:

Mr Ciré Aly Bâ
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Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for **Augustin Bizimungu**
Mr Christopher Black and Mr Patrick De Wolf for **Augustin Ndindiliyimana**
Mr Charles Taku and Ms Beth Lyons for **François-Xavier Nzuwonemeye**
Mr Fabien Segatwa and Mr Seydou Doumbia for **Innocent Sagahutu**

INTRODUCTION

1. The trial against the four accused in this case commenced on 24 September 2004. Prosecution Witness AOE testified on 8, 9, 13 and 14 June 2005. On 7 December 2006 the Prosecution closed its case.
2. On 3 April 2007, the Chamber rendered a decision denying a request by the Defence for Bizimungu to recall Prosecution Witness AOE for additional cross-examination. On 10 April 2007, the the Defence filed a motion requesting the Chamber to grant certification to appeal its decision of 3 April 2007 (the "Impugned Decision") pursuant to Rule 73(B) of the Rules of Procedure and Evidence (the "Rules").¹ The Prosecution did not file a response.

DELIBERATIONS

3. The Chamber recalls its previous Decisions in which it discussed the criteria for certification under Rule 73(B).² Rule 73(B) provides that decisions rendered on motions filed by the parties under Rule 73 are without interlocutory appeal. The same provision invests the Chamber with a discretion to grant certification to appeal when the two prerequisites delineated in Rule 73(B) are satisfied: the moving party must demonstrate that the impugned decision involves an issue (i) that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and (ii) that an immediate resolution of the issue 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. The Chamber stresses that certification to appeal is an exceptional measure that should be granted sparingly.³
4. The Defence for Bizimungu submits that the issue of recalling a witness to confront him with a document (i.e. the annex to his guilty plea), disclosed following his testimony, affects the fair and expeditious conduct of the proceedings. Even though the witness was cross-examined on the document, the parties were not yet in possession of the annex in question, and it was not entered into evidence as an exhibit. The Defence considers therefore, that it has been prevented from giving the Chamber information, which could put the witness' credibility into doubt, and risks that the Chamber will make an incorrect conclusion in this regard.
5. With regard to the first criterion, namely the fact that the impugned decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings, the Chamber understands that the use of the word "significantly" points out the intention of the

¹ "Augustin Bizimungu's Defence Motion for Certification to Appeal the Decision Titled "Decision on Defence Motion to Recall Prosecution Witness AOE for Additional Cross-Examination"(Rule 73(B) of the Rules of Procedure and Evidence)

² *The Prosecutor v. Augustin Bizimungu, Augustin Ndindiliyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu*, Case No. ICTR-00-56-T, Decision on Sagahutu's Request for Certification to Appeal, 9 June 2005, para. 16; Decision on Bizimungu's Request for Certification to Appeal the Oral Decision Dated 8 June 2005, 30 June 2005, para. 17; Decision on Ndindiliyimana's Request for Certification to Appeal the Chamber's Decision Dated 21 September 2005, 26 October 2005, para. 7; Decision on Bizimungu's Motion for Certification to Appeal the Chamber's Oral Decision of 2 February 2006 Admitting Part of Witness GFA's Confessional Statement into Evidence, 27 February 2006, para. 11; Decision on Ndindiliyimana's Motion for Certification to appeal the Chambers Decision dated 15 June 2006, 14 July 2006, para. 7; Decision on Defence Request for Certification to Appeal the Chambers Decision Pursuant to Rule 98 bis, 24 April 2007, para.5.

³ *Prosecutor v. Arsene Shalom Ntahobali and Pauline Nyiramasuhuko*, Case No. ICTR-9721-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' (TC), 18 March 2004, para. 15; *Prosecutor v. Pauline Nyiramasuhuko*, Case No ICTR-98-42-AR73, Decision on Pauline Nyiramasuhuko's Request for Certification (AC), 27 September 2004, para.10.

drafters to exclude issues of minor or tangential significance that may arise in the course of a trial from the category of issues worthy of certification to appeal. The onus for demonstrating how the impugned decision significantly affects the fairness and the progress of the proceedings or the outcome of the trial rests with the moving party.


6. The Chamber held in the impugned decision that the reasons proffered by the Defence for recalling Prosecution Witness AOE were not compelling enough to warrant his recall. The Chamber finds that the Defence has generally recapitulated the thrust of its previous arguments rather than demonstrating how the Chamber's dismissal of the Defence Motion to recall Prosecution Witness AOE will significantly affect the fairness and expeditious conduct of the proceedings or the outcome of the trial. No other argument has been put forward to satisfy the first condition required for the Chamber to exercise its discretion in favour of granting certification for interlocutory appeal. In fact, the Chamber deems the Defence motion to be an attempt to re-litigate an issue that has already been decided by the Chamber.

7. The failure of the Defence for Bizimungu to satisfy the first criterion stipulated in Rule 73(B) of the Rules obviates the need for the Chamber to consider the Defence submissions with regard to the second cumulative criterion.

FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Defence request for certification.

Arusha, 10 May 2007


Asoka de Silva
Presiding Judge



Tagbird Hikmet
Judge


Seon Ki Park
Judge

{Seal of the Tribunal}