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OR: ENG

Date: 24 AUGUST 2007

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Johnston

Defence Counsel for Joseph Nzirorera
Peter Robinson and Patrick Niny Mayidika
Ngumbi

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INTRODUCTION

1. Mr Nzirorera applies for certification to appeal under Rule 73bis the oral decision of Judges Kam and Joensen to proceed under rule 15bis on 11 July 2007.¹ He contends that the judges erred in law and submits that the absence of the presiding judge to attend to official business for a period of 45 minutes to an hour did not fulfill the criteria of the rule because the judge was able to sit but made a choice to attend to other business.²
2. Rule 73 (B) prescribes that such decisions are without interlocutory appeal save with certification by the Trial Chamber. Such certification may only be given if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

DISCUSSION

3. Mr Nzirorera submits that
 - a. Judge Byron and Judge Kam have previously held that the issue of two Judges disposing of motions pursuant to rule 15bis satisfies Rule 73bis as this concerns the fairness and expeditiousness of the proceedings.³
 - b. Mr Nzirorera argues that if proceeding in the absence of an Accused who is sick with an illness that is likely to recur satisfies Rule 73 then proceeding in the absence of a Judge that is likely to recur must also be certified for appeal.⁴
 - c. Mr Nzirorera states that the issue of what constitutes 'unable to attend' has never been decided by the Appeals Chamber. He submits that this issue is likely to recur due to Judge Byron's term of office as the President of the Tribunal and certification to appeal must be granted.⁵
4. The Chamber considers that Mr Nzirorera refers to two previous decisions which in the Chambers view are distinguishable. There is an obvious impact on the possible outcome of a trial when the remaining judges decide to resolve pending motions at a period when the Chamber is not properly constituted, or when the statutory right of an accused to be present at his own trial is involved. It is inconceivable that the impugned decision could have any significant impact on the fairness or outcome of the trial.
5. For these reasons, the chamber finds that the Defence for Nzirorera has not demonstrated that certification of appeal of the impugned Decision would materially advance the proceedings, or that it involves an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings as stipulated in Rule 73(B).

1. *Joseph Nzirorera's Application for Certification to Appeal Decision to Proceed under Rule 15bis (A)*, filed on 16 July 2007, para 1.

2. *Joseph Nzirorera's Application for Certification to Appeal Decision to Proceed under Rule 15bis (A)*, filed on 16 July 2007, para 5 & 6.

3. *Ibid* para 7, 8 & 9.

4. *Joseph Nzirorera's Application for Certification to Appeal Decision to Proceed under Rule 15bis (A)*, filed on 16 July 2007, para 10.

5. *Ibid* para 11.

28/

FOR THESE REASONS, THE CHAMBER

DENIES the Defence request for certification to appeal.

Arusha, 24 August 2007, done in English.



Dennis C. M. Byron

Presiding Judge



With the consent and on
behalf of
Gberdao Gustave Kam
Judge
(Absent during signature)



With the consent and on
behalf of
Vagn Joensen
Judge
(Absent during signature)

[Seal of the Tribunal]

