



UNITED NATIONS
NATIONS UNIES

ICTR-00-56-T
22-05-2008
(66910 - 66907)

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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: 22 May 2008

JUDICIAL RECORDS ARCHIVES
2008 MAY 22 1 P 4: 46

The PROSECUTOR
v.
Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU
Case No. ICTR-00-56-T

**DECISION ON NZUWONEMEYE'S REQUEST FOR CERTIFICATION TO
APPEAL THE CHAMBER'S DECISION OF 29 FEBRUARY 2008**

Office of the Prosecutor:

Mr. Alphonse Van
Mr. Moussa Sefon
Mr. Segun Jegede
Mr. Lloyd Strickland
Mr. Abubacarr Tambadou
Ms. Felistas Mushi
Ms. Faria Rekkas
Ms. Marlize Keefer

Counsel for the Defence:

Mr. Gilles St-Laurent and Mr. Ronnie MacDonald for Augustin Bizimungu
Mr. Christopher Black and Mr. Vincent Lurquin for Augustin Ndindilyimana
Mr. Charles Taku and Ms. Beth Lyons for François-Xavier Nzuwonemeye
Mr. Fabien Segatwa and Mr. Seydou Dombia for Innocent Sagahutu

Taghrid Hikmet

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INTRODUCTION

1. By its consolidated Decision of 29 February 2008, the Chamber denied two Motions filed by the Defence for Nzuwonemeye on the alleged defects in the form of the Indictment in the present case.¹ The First Nzuwonemeye Motion argued defects in the pleading of joint criminal enterprise, the forms of criminal responsibility and several substantive counts in the Indictment. It was denied on the ground that such issues should have been raised at the pre-trial stage through preliminary motions and that the Defence submissions did not show good cause for the waiver of the prescribed time limits, in conformity with Rule 72(F) of the Rules of Procedure and Evidence.² The Second Nzuwonemeye Motion on the alleged discrepancies between the Indictments in the present case and in *Prosecutor v. Karemera et al.* on the role of the RECCE battalion was denied, since the Defence had not attempted to show good cause to warrant the waiver of the time limits pursuant to Rule 72(F).³

2. On 3 March 2008, the Defence for Nzuwonemeye filed a Motion pursuant to Rule 73(B), requesting certification to appeal the Decision of 29 February 2008 ("Impugned Decision").⁴

DELIBERATIONS

3. As a preliminary issue, the Chamber notes that this particular request for certification should have been filed pursuant to Rule 72(B)(ii), since the issue involves the subject matter of preliminary motions which is covered by Rule 72. However, since the standard for certification expounded by both Rules 72(B)(ii) and 73(B) is identical, the Chamber will consider the Defence request in the light of these common criteria. With the exception of motions challenging jurisdiction, decisions on motions are, in principle, "without interlocutory appeal". Certification to appeal is an exception which may be granted when the two criteria set out are both satisfied.⁵ First, in order to exercise the discretion conferred by the Rule, the Chamber must be satisfied that the Impugned Decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Second, the moving party must satisfy the Chamber that an immediate resolution by the Appeals Chamber on the issue may materially advance the proceedings.⁶

4. With respect to the First Nzuwonemeye Motion, the Defence submits that its legal arguments were dismissed in the Impugned Decision on a procedural 'time limit' basis which refutes the purpose of the Rules to promote a fair and expeditious trial.⁷ The Defence

¹ Decision on Nzuwonemeye's Motions to Address Defects in the Form of the Indictment and to Order the Prosecution to Disclose All Exculpatory Material (TC), 29 February 2008.

² *Ibid.*, paras. 7, 10.

³ *Ibid.*, para. 8.

⁴ Nzuwonemeye Request for Certification of Appeal of Trial Chamber's Decision, Filed 29 February 2008, Pursuant to Rule 73(B), filed on 3 March 2008 (Defence Motion).

⁵ *Prosecutor v. Renzaho*, Case No. ICTR-97-31-PT, Décision relative à la demande aux fins de certification d'appel de la Décision du 5 Septembre 2006 en vertu de l'article 72(B) (TC), 25 octobre 2006, para. 6. See generally for a discussion on the criteria for certification pursuant to Rule 73(B): *Prosecutor v. Nindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Request for Certification to Appeal the Chamber's Decision Pursuant to Rule 98bis (TC), 24 April 2007, para. 5; *Prosecutor v. Nindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Defence Requests for Certification and Reconsideration of the Chamber's Rescheduling Order of 3 November 2006 (TC), 17 November 2006, para. 7.

⁶ *Ibid.*

⁷ Defence Motion, paras. 8, 16.

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further submits that since the Accused's right to fair trial is violated if he is tried on a defective indictment, both criteria for certification are met on this basis.⁸

5. The Chamber recalls that issues pertaining to the sufficiency of the indictment relate to the Accused's right to a fair trial.⁹ However, it is clear from the Rules that motions alleging defects in the form of the indictment must be raised within the time limits prescribed in Rule 72. The Chamber may grant a waiver from the time limits if good cause is shown as to why the motion could not have been filed within the stipulated time. In the Impugned Decision, the Chamber concluded that the Defence did not show good cause to warrant a waiver of the prescribed time limits. The Accused's right to a fair trial was, however, not prejudiced since the Defence is permitted a further opportunity to raise issues relating to the Indictment for the Chamber's consideration at the time of closing. The Chamber, therefore, does not find that this issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial. Since the first criterion of the cumulative conditions for certification is not met, the request in respect of the Chamber's finding on the First Nzuwonemeye Motion is denied.

6. Regarding the Second Nzuwonemeye Motion, the Defence submits that the alleged discrepancies between the Indictments in *Karemira et al.* and the present case should not have been classified as defects in the indictment in the Impugned Decision, but that they were instead fundamental contradictions which violate the principles of fair trial and personal jurisdiction.¹⁰ The Defence argues that both criteria for certification have been fulfilled.¹¹

7. The Chamber recalls that the Defence had previously attempted to impugn the factual basis of the present Indictment in relation to the alleged role of the RECCE battalion and the Accused's responsibility. The Chamber, however, notes that besides stating that the arguments of fundamental fairness are obvious on the face of the Indictments concerned, the Defence does not attempt to discharge its burden of proving the criteria for certification and merely repeats its earlier arguments advanced in its original Motion. The Defence request relating to the Chamber's finding on the Second Nzuwonemeye Motion is therefore denied.

⁸ Defence Motion, paras. 18, 21, 22.

⁹ *Prosecutor v. Kupreskic et al.*, Case No. IT-95-16-A, Judgement (AC), 23 October 2001, para. 88; *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Decision on the Prosecutor's Motion to Pursue the Oral Request for the Appeals Chamber to Disregard Certain Arguments made by Counsel for Appellant Barayagwiza at the Appeals Hearing on 17 January 2007 (AC), 5 March 2007, para. 15.

¹⁰ Defence Motion, paras. 24, 27.

¹¹ Defence Motion, para. 32.

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FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Defence Motion.

Arusha, 22 May 2008



Taghrid Hikmet
(Read and approved)
Asc ka de Silva
Presiding Judge
(Absent at time of
signature)

Taghrid Hikmet
Taghrid Hikmet
Judge

Seon Ki Park
Seon Ki Park
Judge

[Seal of the Tribunal]