



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 16 July 2008

THE PROSECUTOR

v.

**Édouard KAREMERA
Mathieu NGIRUMPATSE
Joseph NZIRORERA**
Case No. ICTR-98-44-T

**DECISION ON "REQUETE POUR M. NGIRUMPATSE EN CERTIFICATION
D'APPELL DE LA DÉCISION DU 16 JUIN 2008 RELATIVE À SA REQUÊTE EN
ACQUITTEMENT, ET À TITRE SUBSIDIAIRE EN ANNULATION DES
INTERROGATOIRES COMPLÉMENTAIRES DU PROCUREUR POSTÉRIEURS
AU 25 JANVIER 2008."**

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

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INTRODUCTION

1. On 28 April 2008, Mathieu Ngirumpatse filed a second motion for judgment of acquittal because he considered that the Prosecution case had remained open until 21 April 2008, when it completed the redirect examination of its last witness.¹ The Chamber denied the motion as untimely because it had already found that the Prosecution case had closed on 25 January 2008.²

2. Mathieu Ngirumpatse now moves for certification to appeal the impugned decision.³ If the Chamber denies the motion, Ngirumpatse requests that the Chamber strike all Prosecution examinations of witnesses BDW, AXA, and BTH. The Prosecution opposes the relief sought by Ngirumpatse although it agrees that an appeal should be certified on the issue of when the Prosecution case can be deemed to be closed.⁴

DELIBERATIONS

Standard for Certifying an Interlocutory Appeal

3. Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) provides that leave for an interlocutory appeal may be granted when the applicant demonstrates that the following two conditions are met: 1) the “decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial”, and 2) “an immediate resolution by the Appeals Chamber – in the view of the Trial Chamber - may materially advance the proceedings.” A Trial Chamber may grant certification to appeal a decision in its entirety, or limit the certification to part of the decision, or to one or more particular issues in the decision. Certification has been granted where a decision may concern the admissibility of broad categories of evidence, or where it determines particularly crucial matters of procedure or evidence.⁵ The Appeals Chamber has repeatedly emphasized the primacy of Trial Chamber rulings involving an exercise of discretion, insisting that interlocutory appeals under Rule 73(B) are only warranted in exceptional circumstances.⁶

4. Mathieu Ngirumpatse contends that he was not privy to all of the Prosecution’s evidence until 21 April 2008, when the Prosecution completed the redirect examination of its

¹ Requete en Acquittement de M. Ngirumpatse Deposee sur le Fondement de L’Article 98 bis du Reglement de Procedure et de Preuve, filed on 28 April 2008.

² *The Prosecutor v. Edouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera* (“Karemera et al.”), Case No. ICTR-98-44-T, Decision on Mathieu Ngirumpatse’s Motion for Judgment of Acquittal (TC) (“Impugned Decision”), 16 June 2008.

³ Requete pour M. Ngirumpatse en certification d’appel de la décision du 16 juin 2008 relative à sa requête en acquittement, et à titre subsidiaire en annulation des interrogatoires complémentaires du Procureur postérieurs au 25 janvier 2008., filed on 14 June 2008.

⁴ Prosecutor’s Response to Mathieu Ngirumpatse’s *Requete pour M. Ngirumpatse en certification d’appel de la décision du 16 juin 2008 relative à sa requête en acquittement, et à titre subsidiaire en annulation des interrogatoires complémentaires du Procureur postérieurs au 25 janvier 2008.*, filed on 24 June 2008.

⁵ *Prosecutor v. Casimir Bizimungu, Justin Mugenzi, Jerome-Clement Bicamumpaka, and Prosper Mugiraneza*, Case No. ICTR-99-50-T, Decision on the Prosecutor’s Motion for Certification to Appeal the Trial Chamber’s Decisions on Protection of Defence Witnesses (TC), 28 September 2005, para. 3.

⁶ *Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, (“Bagosora et al.”) Decision on Kabiligi Application for Certification Concerning Defence Cross Examination after Prosecution Cross Examination (AC), 2 December 2005, para. 5.

last witness. Therefore, he claims that he was entitled to file a second motion for judgement of acquittal that took into consideration the Prosecution evidence that was elicited until 21 April 2008, and that the Chamber’s decision to deny that motion affected the fair and expeditious conduct of the proceedings.

5. The Chamber has already denied motions to certify an interlocutory appeal filed by Joseph Nzirorera and the Prosecution, which contested the Chamber’s decision that the Prosecution case had closed on 25 January 2008.⁷ The Chamber reiterates that the Prosecution closed its case on 25 January 2008, and that recalling Prosecution witnesses to testify after that date is not tantamount to reopening the case, and does not therefore allow for the filing of a further motion for judgment of acquittal.⁸

6. Moreover, the Chamber notes that Mathieu Ngirumpatse was not deprived of the entirety of the Prosecution evidence prior to 21 April 2008 because the three Accused had access to all the Prosecution evidence on 25 January 2008.⁹ Therefore, because he was not precluded from filing a motion for judgement of acquittal that considered the totality of the Prosecution evidence, simply because the Chamber held that the Prosecution case closed on 25 January 2008, Ngirumpatse’s motion does not concern an issue that affects the fair and expeditious conduct of the proceedings. Accordingly, the Chamber considers that Ngirumpatse has not satisfied the first prong of the Rule 73(B) test, and denies the motion.

7. The Chamber does not strike the Prosecution examinations of witnesses BDW, AXA, and BTH, which occurred after 25 January 2008, because the Prosecution is entitled to re-examine its witnesses when they are recalled by the Defence.

FOR THESE REASONS, THE CHAMBER

I. DENIES the motion in its entirety.

Arusha, 16 July 2008, done in English.

Dennis C. M. Byron

Gberdao Gustave Kam

Vagn Joensen

Presiding Judge

Judge

Judge

[Seal of the Tribunal]

⁷ *Karemera et al.*, Decision on Prosecutor’s Application to Certify an Appeal and Joseph Nzirorera’s Application to Certify an Appeal and/or Reconsider “Decision on the Prosecution Motion to Reopen its Case and on the Defence Motion to File another Rule 98bis Motion” (TC), 24 June 2008.

⁸ Impugned Decision, para. 8.

⁹ *Ibid.*