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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: 26 August 2008

THE PROSECUTOR

v.

Callixte KALIMANZIRA

Case No. ICTR-05-88-T

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JUDICIAL RECORDS ARCHIVES
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**DECISION ON DEFENCE MOTION FOR CERTIFICATION TO APPEAL
CHAMBER'S DECISION ON PROSECUTION MOTION FOR ADMISSION OF
CERTAIN MATERIALS**

Rule 89(C) of the Rules of Procedure and Evidence

Office of the Prosecutor

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Defence Counsel

Arthur Vercken
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INTRODUCTION

1. On 10 July 2008, the Chamber granted the Prosecution Motion to admit 45 documents into evidence pursuant to Rule 89 (C) of the Rules of Procedure and Evidence ("Rules").¹ The Defence for Kalimanzira now seeks certification to appeal pursuant to Rules 73 (B) and (C) of the Rules ("Defence Motion").² The Prosecution opposes the Defence Motion in its entirety, objects to the confidential nature of its filing, and submits that it too is inadmissible because it was filed out of time.³

DELIBERATIONS

Timeliness of the Defence Motion for Certification to Appeal

2. Rule 73 (C) of the Rules provides that requests for certification to appeal must be filed within seven days of the filing of the impugned decision. The Prosecution asserts that because the Defence Motion was filed on 21 July 2008, namely ten days after the impugned decision, it should not be considered by the Trial Chamber.

3. The Chamber recognizes a *prima facie* showing that the Defence Motion was filed in an untimely manner. However, because the impugned decision is largely based on a finding of untimeliness, the Chamber finds it is in the interests of justice to resolve the application on its merits.

Confidential Nature of the Filing

4. Proceedings at this Tribunal must be public unless good cause is shown to the contrary. The only good cause for a party filing a document confidentially is if the information in the filing is confidential and exposure would risk damaging the proceedings.⁴ The Defence Response contains nothing which the Chamber considers to warrant this exceptional measure. The filing should be made public.

¹ *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Decision on Prosecution Motion for Admission of Certain Materials (TC), 10 July 2008 ("Impugned Decision").

² *Requête aux fins d'autorisation d'interjeter appel à l'encontre de la « Decision on Prosecution Motion for Admission of Certain Materials » du 19 juillet 2008*, filed confidential on 17 July 2008.

³ Prosecution Response to Defence Motion for Certification to Appeal the Chamber's "Decision on Prosecution Motion for Admission for Certain Materials" dated 10 July 2008, filed 25 July 2008.

⁴ See e.g. *The 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, para. 4.

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On the merits

5. Rule 73 (B) of the Rules provides that a decision pursuant to Rule 73 is without interlocutory appeal, save that the Trial Chamber may grant leave to file an interlocutory appeal when it significantly affects the fair and expeditious conduct of proceedings or the outcome of the trial, and where immediate resolution by the Appeals Chamber may materially advance the proceedings. The moving party must demonstrate that both requirements of Rule 73 (B) of the Rules are satisfied, and even then, certification to appeal must remain exceptional.⁵

6. The Defence for Kalimanzira submits that (i) the Chamber's refusal to admit the Defence Response compromised the adversarial principle, which violates the fairness of the proceedings, and (ii) the Chamber's decision to admit 45 documents introduced excessive evidence to rebut, which compromises the expeditious conduct of the proceedings.

7. The Chamber's ruling that the Defence Response was filed out of time was a finding of fact made after hearing the Parties and considering the circumstances of the filing. The Chamber considers it erroneous to categorize a ruling that a submission filed out of time is inadmissible as a violation of the adversarial principle. In any event, this is not an exceptional circumstance and it does not affect the fair conduct of the proceedings.

8. The responsibility of determining what evidence to admit during the course of a trial belongs to the Trial Chamber, not the Appeals Chamber. In *Nyiramasuhuko*, the Appeals Chamber underscored that certification to appeal must be an exception when deciding on the admissibility of evidence.⁶ Although the Defence's motion for certification refers to the admission of forty-five documents, the Chamber notes that the Defence had only objected to the admission of seven of those documents. Judicial economy, the only point argued by the Defence, is not better served by allocating time and judicial resources to such an appeal. There is no exceptional circumstance which warrants certification to appeal.

⁵ See e.g. *The Prosecutor v. Edouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Joseph Nzirorera's Application for Certification to Appeal Denial of Motion to Obtain Statements of Witnesses ALG and GK (TC), 9 October 2007, paras. 5-6.

⁶ *The Prosecutor v. Pauline Nyiramasuhuko*, Case No. ICTR-98-42-AR73.2, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5; see also *Karemera et al.*, Decision on Mathieu Ndirumpatse's Request for Certification of Appeal of the Chamber's Decision to Admit Exhibits IP005 and IP006 (TC), 29 November 2007, para. 7.



FOR THESE REASONS, THE CHAMBER

DEFIES the Defence Motion in its entirety; and

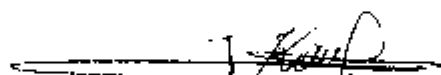
ORDERS that the Defence Motion be re-filed as a public document.

Arusha, 26 August 2008, done in English.



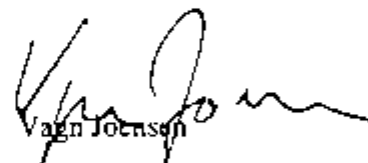
Dennis C. M. Byron

Presiding Judge



Gberdao Gustave Kam

Judge



Vain Joenson

Judge

[Seal of the Tribunal]

