



UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER III

Before Judge: C. M. Dennis Byron, Presiding

Registrar: Adama Dieng

Date: 29 January 2009

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-R73(B)

DECISION ON PROSECUTION MOTION FOR CERTIFICATION TO APPEAL

THE LIMITATION OF THE SCOPE OF THE RETRIAL

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

Prosecution Counsel:
Mr. Charles Adeogun-Phillips
Mr. Ibukunolu Babajide

Defence Counsel:
Mr. William E. Taylor III
Ms. Abbe Jolles

1. The retrial of Tharcisse Muvunyi was scheduled to commence on 12 January 2009. Counsel for the defence did not appear and the trial did not proceed. During a status conference two days later Judge Dennis Byron sitting alone as the Presiding Judge made a number of oral rulings, including one limiting the scope of the retrial.¹ In that decision, the Chamber directed that the retrial of Tharcisse Muvunyi was limited to the assessment of the evidence adduced before the first Trial Chamber, and removed from the witness list presented with the Pre-Trial Brief those who had not previously testified in the case.

2. On 19 January 2009, the Prosecutor requested permission to appeal the decision on the scope of the retrial² in accordance with Rule 73(B). The Defence has not responded within the prescribed timeframe. The Chamber will now rule on the Motion.

3. Rule 73(B) of the Rules provides that there is no appeal without certification from the Chamber which may be granted 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.

4. In the present case, the Chamber agrees that its ruling has a significant impact on the fair and expeditious conduct of the proceedings and considers that an immediate resolution by the Appeals Chamber may materially advance the proceedings. In those circumstances, the Chamber will grant the certification to appeal, and suspend the proceedings until the decision of the Appeals Chamber.

5. The Chamber reminds the parties that the retrial could start any time after the decision of the Appeals Chamber, and invites the parties to be prepared for such commencement. A scheduling order will be issued in due course.

FOR THOSE REASONS,

THE CHAMBER

GRANTS the Motion for certification to appeal the limitation of the scope of the retrial.

Arusha, 29 January 2009, done in English.

C.M. Dennis Byron
Presiding Judge

[Seal of the Tribunal]

¹ T. 14 January 2009, p. 3:

“The Appeals Chamber ordered a re-trial of the Accused limited to the allegation according to which he had made a speech at the Gikore trade centre, as it had found that the Trial Chamber had not provided sufficient reasons in its assessment of the evidence. The re-trial of Tharcisse Muvunyi shall therefore be limited to correcting the Trial Chamber’s failure, that is to say, the assessment of the evidence adduced before the first Trial Chamber, as this re-trial is not the occasion for the Prosecution to present additional evidence to strengthen its case.

Consequently the Chamber considers that the scope of the re-trial of Tharcisse Muvunyi shall be limited to the evidence adduced before the Trial Chamber by the Prosecution during the initial trial, as far as it is relevant to the remaining charge, and that the Prosecution should not adduce any new evidence. Therefore the Prosecution cannot call Witnesses FBX, AMJ, and CCS.”

² Prosecutor’s Motion Pursuant to Rule 73(B) for Certification to Appeal a Decision of Trial Chamber III Limiting the Scope of the Retrial Pursuant to Rule 118(C), 19 January 2009.