



UNITED NATIONS
NATIONS UNIES

ICTR-00-55-T
02-09-2009
(994-992)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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R

OR: ENG

TRIAL CHAMBER III

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

Registrar: Mr. Adama Dieng

Date: 2 September 2009

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55A-T

2009 SEP 21 P 12:18
JUDICIAL RECORDS/ARCHIVES
RECEIVED

**DECISION ON MOTION FOR CERTIFICATION TO APPEAL: DECISION
DENYING MOTION FOR JUDGEMENT OF ACQUITTAL**

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

Office of the Prosecutor:

Charles Adeogun-Phillips
Ibukunolu Alao Babajide

Counsel for the Accused:

William E. Taylor III
Abbe Jolles

VJ

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INTRODUCTION

1. On 18 August 2009, the Chamber denied Tharcisse Muvunyi's motion for judgement of acquittal pursuant to Rule 98 *bis* of the Rules of Procedure and Evidence ("Rules"). The Chamber found that the Indictment was defective with respect to the date of the alleged culpable conduct, but that this defect had been cured by the Prosecution through the provision of adequate notice. Consequently, the Chamber found that the evidence led by the Prosecution, if believed, was capable of sustaining a finding of guilt beyond reasonable doubt on the charge of direct and public incitement to commit genocide.¹

2. Tharcisse Muvunyi now moves for certification to appeal the Impugned Decision.² The Prosecution has not responded to the Motion.

DELIBERATIONS

3. Rule 73(B) of the Rules provides that certification to appeal may only 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. The Appeals Chamber recognizes the discretionary powers of the Trial Chamber over Rule 73(B) procedures and regularly emphasizes that requests for certification to appeal are only warranted under exceptional circumstances.³

4. Tharcisse Muvunyi argues that the Chamber erred in concluding that the Prosecution led evidence on the essential elements of the crime charged. In particular, Muvunyi argues that the Chamber erred in concluding that the Prosecution's failure to lead evidence on each element of the crime could be cured through disclosure by the Prosecution of new criminal conduct. He claims that these issues meet the criteria of Rule 73(B) because it could render any conviction unsafe.⁴

5. The Chamber accepts these submissions. Indeed, in the Impugned Decision, the Chamber noted that if any defect in the Indictment has not been cured by the Prosecution, it would be fatal to the Prosecution as the charge, and the case, would be dismissed. In such

¹ *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T ("*Muvunyi*"), Decision on Motion for Judgement of Acquittal, 18 August 2009 ("Impugned Decision").

² Accused Tharcisse Muvunyi's Motion Pursuant to Rule 73(b) for Certification to Appeal the Decision of Trial Chamber III Denying Motion for Judgement of Acquittal, filed 24 August 2009 ("Motion").

³ *The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, and Joseph Nzirorera*, Case No. ICTR-98-44-T, Decision on Mathieu Ngirumpatse's Request for Certification to Appeal the Order of 17 April 2008 on the Presentation of the Defence Case, 14 May 2008, para. 4.


⁴ Motion, paras. 8, 10-17.

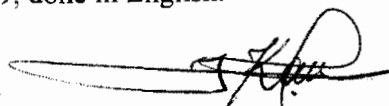
circumstances, the Chamber finds that the resolution of the issues raised in the Impugned Decision significantly affect the outcome of the trial and an immediate resolution by the Appeals Chamber will materially advance the proceedings.

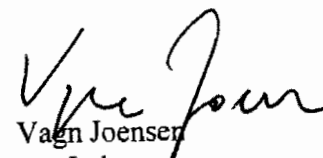
FOR THESE REASONS, THE CHAMBER:

GRANTS the Motion for certification to appeal the Decision on Motion for Judgement of Acquittal.

Arusha, 2 September 2009, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

