



UNITED NATIONS  
NATIONS UNIES

ICTR-98-44-T  
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(S0558 - S0556) *2010*

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH  
Original: FRENCH

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

Registrar: Adama Dieng

Date: 4 February 2010

JUDICIAL  
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THE PROSECUTOR  
v.  
ÉDOUARD KAREMERA  
MATTHIEU NGRUMPATSE  
JOSEPH NZIRORERA

DECISION ON MATHIEU NGRIRUMPATSE'S APPLICATION FOR  
CERTIFICATION TO APPEAL THE CONSOLIDATED DECISION OF  
4 DECEMBER 2009

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

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CIII10-0025 (E)

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## INTRODUCTION

1. On 11 December 2009, Mathieu Ngirumpatse filed an application for certification to appeal<sup>1</sup> the Chamber's Consolidated Decision following his submissions of 25 September 2009 and his request of 10 November 2009,<sup>2</sup> rendered on 4 December 2009. The Prosecutor raised an objection to this Application<sup>3</sup> and Mathieu Ngirumpatse filed a Reply<sup>4</sup>.

## DELIBERATIONS

2. Rule 73(B) of the Rules provides that certification to appeal may only be granted on two conditions: the moving party has to demonstrate (i) 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, and (ii) that an immediate resolution by the Appeals Chamber may materially advance the proceedings. It is for the party seeking certification to demonstrate that both conditions provided for under Rule 73(B) are satisfied, and even then, certification to appeal remains an exceptional measure.<sup>5</sup>

3. Mathieu Ngirumpatse is challenging the findings of the consolidated decision; he asserts that the Chamber erred in its reasoning,<sup>6</sup> and reverts to the submissions already made in his two original requests.<sup>7</sup> Mathieu Ngirumpatse further asserts that the impugned decision concerns an issue that would significantly affect the fairness of the proceedings or its outcome and that its resolution may materially advance the proceedings.<sup>9</sup> He further contends that the consolidated decision causes prejudice to the rights guaranteed him under Article 20(2) of the Statute, in particular his right to a fair trial,<sup>10</sup> and that his current situation compromises the fairness of the trial in that he has to proceed with the preparation of his case

<sup>1</sup> *Requête de Mathieu Ngirumpatse en certification d'appel de la décision consolidée du 4 décembre 2009 suite aux écritures de Mathieu Ngirumpatse du 25 septembre 2009 et à sa requête du 10 novembre 2009*, 11 December 2009 ("Ngirumpatse's Application").

<sup>2</sup> *Décision consolidée suite aux écritures de Mathieu Ngirumpatse et à sa requête du 10 octobre 2009*, 4 December 2009 ("Consolidated Decision").

<sup>3</sup> The Prosecutor's Response to Ngirumpatse's Application for Certification to Appeal: *Décision consolidée suite aux écritures de Mathieu Ngirumpatse du 25 septembre 2009 et de sa requête du 10 novembre 2009* ("The Prosecutor's Response"), para. 4.

<sup>4</sup> *Réplique de Mathieu Ngirumpatse à la réponse du Procureur suite à sa demande de certification d'appel de la décision consolidée du 4 décembre 2009*, 21 December 2009.

<sup>5</sup> *Prosecutor v. Milan Milutinović, Nilola Sainović, Dragoljub Ojdanić, Nebojsa Pavković, Vladimir Lazarević, Vlastimir Dorđević and Sreten Lukić*, Case No. IT-05-87-T, Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coo's Expert Report, 30 August 2006 (Trial Chamber); *Karemera et al.*, Decision on Joseph Nzirorera's Application for Certification to Appeal Disclosure Decision on Witness ALG, 29 April 2009, para. 3; *Karemera et al.*, Decision on Edouard Karemera's Application for Certification to Appeal the Decision Denying his Motion for Admission of an Expert Witness, 1 July 2009 (Trial Chamber), para. 3; *Karemera et al.*, *Décision sur la demande de certification en appel de Mathieu Ngirumpatse contre la 'Decision on Remand Regarding Continuation of Trial'*, 16 October 2009, para. 6; *Karemera et al.*, *Décision sur la requête d'Edouard Karemera pour une certification d'appel de la décision relative au droit d'être jugé sans retard excessif*, 24 December 2009, para. 3.

<sup>6</sup> Ngirumpatse's Application, para. 17.

<sup>7</sup> *Ibid.*, para. 24.

<sup>8</sup> *Ibid.*, para. 25.

<sup>9</sup> *Ibid.*, para. 26.

<sup>10</sup> *Ibid.*, para. 27.

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at the same time as he is fighting the illness.<sup>11</sup> Finally, Matthieu Ndirumpatse submits that the denial of his request for an additional medical examination and the attendant risks to his health and to the continuation of the trial constitute sufficient grounds to inform the need for an immediate resolution by the Appeals Chamber.<sup>12</sup>

4. The Chamber notes that a substantial part of Matthieu Ndirumpatse's submissions aims at challenging the Chamber's findings on issues that have already been addressed in the impugned decision. The Chamber further notes that Matthieu Ndirumpatse does not show in what way the certification to appeal is necessary. Indeed, he does not demonstrate how the impugned decision concerns an issue that may affect the fairness of the proceedings or its outcome, nor does he demonstrate that there is an issue which, upon resolution by the Appeals Chamber, may materially advance the proceedings, or which prejudices his right to a fair trial and the integrity of the proceedings. Consequently, the Chamber holds that the requirements for a certification to appeal under Rule 73(B) of the Rules have not been satisfied.

**For the foregoing reasons, the Chamber**

**Denies Matthieu Ndirumpatse's application.**

Arusha, 4 February 2010

[Signed]

Dennis C. M. Byron  
Presiding Judge

[Signed]

Gberdao Gustave Kam  
Judge

[Signed]

Vagn Joensen  
Judge

[Seal of the Tribunal]



<sup>11</sup> Ibid., para. 28.

<sup>12</sup> Ibid., para. 29.