



ICTR-00-55-T  
13-08-2010  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
(2374 - 2371)

2374  
IVAN

OR: ENG

**TRIAL CHAMBER III**

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

**Registrar:** Adama Dieng

**Date:** 12 August 2010

**THE PROSECUTOR**

v.

**Ildephonse NIZEYIMANA**

**CASE NO. ICTR-2001-55C-PT**

JURAMENT  
2008.08.12  
A. H. S.

**DECISION ON ILDEPHONSE NIZEYIMANA'S MOTION FOR CERTIFICATION**

*Rule 73 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**  
Richard Karegyesa  
Drew White  
Yasmine Chubin  
Astou Mbow

**Defence Counsel for Ildephonse Nizeyimana:**  
John Philpot  
Cainnech Lussiaa-Berdou

8th

## INTRODUCTION

1. On 18 March 2010, Ildephonse Nizeyimana filed a motion<sup>1</sup> asserting defects in the Indictment; the Chamber granted the motion in part on 9 June 2010 and ordered the Indictment to be amended in certain respects.<sup>2</sup> On 23 June 2010, Nizeyimana filed a motion<sup>3</sup> stating that the Prosecution had not complied with the 9 June 2010 ruling; the Chamber's subsequent Decision of 12 July 2010 required a few additional amendments but asserted that the Prosecution had complied.<sup>4</sup> On 15 July 2010, Nizeyimana filed a Motion for Certification of the 12 July 2010 Decision.<sup>5</sup> The Prosecution opposes Nizeyimana's Motion.<sup>6</sup>

## DELIBERATION

2. Rule 73(B) of the Rules of Procedure and Evidence provides that a party can seek certification for interlocutory appeal for a decision on a motion advanced after the initial appearance by the Accused, where: (i) the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (ii) in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. It is established jurisprudence that even when the two requirements of Rule 73(B) are established, granting certification must remain an exceptional measure.<sup>7</sup>

3. The Prosecution opposes the motion because: it claimed that a decision relating to the Indictment will not automatically affect the fair and expeditious proceedings or outcome of the trial; the Motion was a re-litigation of the issues and therefore improper; and the

<sup>1</sup> Defence Motion to Order the Prosecution to Comply with a Trial Chamber Decision, filed on 18 March 2010.

<sup>2</sup> *Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-00-55C-PT ("*Nizeyimana*"), Decision on Nizeyimana's Preliminary Motion on Defects in the Amended Indictment (TC), 9 June 2010.

<sup>3</sup> Defence Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment, filed on 23 June 2010.

<sup>4</sup> *Nizeyimana*, Decision on Nizeyimana's Motion to Order the Prosecutor to Conform with a Trial Chamber Decision and Strike Parts of the June 18 Amended Indictment (TC), 12 July 2010. ("Impugned Decision").

<sup>5</sup> Nizeyimana Defence Motion for Certification, filed on 15 July 2010 ("Motion").

<sup>6</sup> Prosecution Response to Defence Motion for Certification, filed on 21 July 2010 ("Response").

<sup>7</sup> *Prosecution v. Édouard Karemera, Matthieu Ngirumpatse, and Joseph Nzirorera*, Case no. ICTR-98-44-T, Decision on Joseph Nzirorera's Application for Certification to Appeal Decision on 16<sup>th</sup> Notice of Rule 68 Violation (TC), 8 September 2009; *Prosecutor v. Milan Milutinovi, Nikola Ainaovi, Dragoljub Ojdani, Neboja Pavkovic, Vladimir Lazarevi, Vlastimir Dordevi, and Sreten Luki*, 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 (TC), 30 August 2006.

Defence's request amounted to the Prosecution pleading evidence in the Indictment, rather than charges and material facts.<sup>8</sup>

4. In the Impugned Decision, the Chamber found that the phrase "where this information is known" used in the 9 June 2010 Decision applied to the entirety of the sentence in which it was used, rather than the immediately preceding clause.<sup>9</sup> As such, the Chamber held that the Prosecution had provided sufficient additional detail to the paragraphs in question by providing the known information.<sup>10</sup> The Chamber did note four areas that still required clarification, and directed the Prosecution to file an amended Indictment no later than 14 July 2010.<sup>11</sup> The Prosecution filed an amended Indictment on 14 July 2010.

5. In his Motion, Ildephonse Nizeyimana raises two grounds for appeal: the Chamber's alleged misinterpretation of the language of its 12 July 2010 Decision and the Prosecution's non-compliance with the Chamber's 9 June 2010 Decision. The two grounds of appeal are linked together by the shared complaint of vagueness in the Indictment. The resolution of the first would directly affect the resolution of the second.

6. In considering whether to grant certification for appeal, the Chamber does not need to determine whether the Indictment sufficiently pleads the details of the Prosecution's case. Rather, the Chamber must determine whether the issue is one that merits certification under Rule 73(B). The Chamber reasons that both prongs are met for both grounds of Appeal.

7. First, the Impugned Decision touches upon the fair and expeditious conduct of the proceedings as well as the outcome of the trial. The language of the 9 June 2010 Decision and the issue of compliance will shape the scope of the Indictment. An indictment is supposed to inform the Accused of the charges against him and limit the scope of the charges.<sup>12</sup> If these functions are not met, for example if material facts are not pleaded with sufficient specificity, then the Indictment is defective.<sup>13</sup> A defective Indictment will significantly affect the fair and expeditious conduct of the proceedings and the outcome of the trial.

8. Second, deficiencies in the Indictment affect the rights of the Accused and thus should be resolved before the trial commences. ICTR jurisprudence has allowed the Prosecution to

<sup>8</sup> Response, paras. 9-11.

<sup>9</sup> Impugned Decision, para. 3.

<sup>10</sup> Impugned Decision, para. 3.

<sup>11</sup> Impugned Decision, para. II-VI.

<sup>12</sup> *Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Emmanuel Imanishimwe*, Case No. ICTR-99-46-A, Judgment (AC), 7 July 2006, Judge Schomburg's Dissenting Opinion, para. 2.

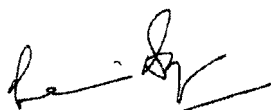
<sup>13</sup> *Prosecutor v. Ferdinand Nahimana, Jean Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-A, Judgment (AC), 28 November 2007, para. 324.


“cure” a defective indictment during the trial, provided that the Prosecution has given “timely, clear, and consistent” information to the Defence.<sup>14</sup> Ildephonse Nizeyimana’s Motion is unique because it is a pre-trial motion; “curing” is typically used during the proceedings and therefore does not properly apply to the present situation. Additionally, jurisprudence suggests that “curing” should be sparingly used<sup>15</sup> and should not be relied upon by the Prosecution to provide notice.<sup>16</sup> As such, “curing” will not adequately address the issue—whether the Prosecution has sufficiently pled the particulars to put the Accused on notice. Therefore, the Chamber considers that an immediate response by the Appeals Chamber to the two grounds of appeal will materially advance the proceedings.


**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** Ildephonse Nizeyimana’s Motion in its entirety.

Arusha, 12 August 2010, done in English.

  
Dennis C. M. Byron  
Presiding Judge

  
Gberdao Gustave Kam  
Judge

  
Vagn Joensen  
Judge

[Seal of the Tribunal]



<sup>14</sup> *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-A, Judgment (AC), 29 August 2008, paras. 20, 120; *Prosecutor v. Zoran Kupre\_ki\_ et al.*, Case No. IT-95-16-A, Judgment (AC), 23 October 2001, para. 114.

<sup>15</sup> *Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-2001-64-A, Judgment (AC), 7 July 2006, para. 55.

<sup>16</sup> *Prosecutor v. Elizaphan Ntakirutimana and Gaspard Ntakirutimana*, Cases Nos. ICTR-96-10-A and ICTR-96-17-A, Judgment (AC), 13 December 2005, para. 125.