

ICTR-99-50-T
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UNITED NATIONS
NATIONS UNIES

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

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Emile Francis Short
Lee Gacuiga Muthoga

Registrar: Adama Dieng

Date: 31 August 2010

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

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**DECISION ON MUGIRANEZA'S REQUEST FOR RECONSIDERATION OR
ALTERNATIVELY CERTIFICATION TO APPEAL THE DECISION ON
MUGIRANEZA'S FOURTH MOTION TO
DISMISS INDICTMENT FOR VIOLATION OF RIGHT TO TRIAL
WITHOUT UNDUE DELAY DATED 23 JUNE 2010**

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

Office of the Prosecutor:
Mr. Paul Ng'arua

Counsel for the Defence:
Ms. Michelyne C. St. Laurent and Ms. Andrea Valdivia for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

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INTRODUCTION

1. By Decision dated 23 June 2010, the Trial Chamber, Judge Short dissenting, rejected Mugiraneza's fourth motion to dismiss the indictment against him for violation of his right to trial without undue delay.¹
2. On 29 June 2010, Mugiraneza filed a request for reconsideration or in the alternative certification to appeal the Impugned Decision.² On 5 July 2010, the Prosecution filed its response submitting that the Motion should be denied as Mugiraneza had failed to satisfy the requirements for reconsideration or certification to appeal.³

DISCUSSION

The Request for Reconsideration

3. The Chamber has an inherent power to reverse or revise a prior decision where new material circumstances have arisen that did not exist at the time of the original decision, or where the decision was erroneous or constituted an abuse of the Chamber's authority and has caused

¹ Decision on Prosper Mugiraneza's Fourth Motion to Dismiss Indictment For Violation of Right to Trial Without Undue Delay, 23 June 2010 ("Impugned Decision").

² Prosper Mugiraneza's Motion to Reconsideration of the Trial Chamber's Decision of Prosper Mugiraneza's 11th Anniversary Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay or in the Alternative Motion for Certification for Interlocutory Appeal, filed 29 June 2010 ("Mugiraneza Motion").

³ Prosecutor's Response to Prosper Mugiraneza's Motion for Reconsideration of the Trial Chamber's Decision of Prosper Mugiraneza's 11th Anniversary Motion to Dismiss Indictment For Violation of Right to Trial Without Undue Delay or in the Alternative Motion for Certification For Interlocutory Appeal, filed 5 July 2010 ("Prosecution Response").



prejudice or injustice to a party.⁴ The onus is on the party seeking reconsideration to demonstrate special circumstances warranting such reconsideration.⁵

4. Mugiraneza's request for reconsideration of the Impugned Decision is primarily based on the May 2010 Completion Strategy Report ("Report") and President Byron's explanatory address to the Security Council on 18 June 2010 ("Address").⁶ Mugiraneza submits that this Report and Address took place after he filed his original motion alleging undue delay and his reply to the Prosecution's response in April 2010 although they were available to the Chamber at the time it issued its decision.⁷ Mugiraneza submits that they constitute significant new evidence of the action or inaction of the authorities which has led to the delay in the delivery of the judgement in this case.⁸

5. The Chamber does not consider that either the Report or the Address constitute new material circumstances that did not exist at the time the Impugned Decision was issued. The Chamber emphasises that neither the Report nor the Address are official filings in these proceedings, such as a scheduling order, but rather statements from the Office of the President in connection with its obligations to report to the United Nations Security Council. Consequently, they are not new material circumstances in this case. For this reason, the Chamber declines to reconsider the Impugned Decision on the basis of the Report or the President's Address.

6. Mugiraneza further submits that Judge Short gave insufficient consideration in his dissenting opinion to the role of the Secretary General in the administration of the Tribunal.⁹ Although it is unclear, Mugiraneza appears to suggest that this is a second ground for reconsidering the Impugned Decision.¹⁰ Because the Impugned Decision was not decided on the

⁴ Decision on Bizimungu's Requests for Reconsideration of the Decision on the Objections of Mugiraneza and Bicomumpaka to the Engagement of Mr. Everard O'Donnell as a Chambers Consultant Dated 28 August 2009, filed on 23 September 2009, ("Decision on Certification to Appeal Mr. O'Donnell Decision"), para. 3; Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, Decision on Joseph Nzirorera's Second Motion for Reconsideration of Sanctions, 8 November 2007, para. 6; *Karemera et al.*, Decision on the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses, 29 August 2005, para. 8; *Karemera et al.*, Decision on Defence Motion for Modification of Protective Order: Timing of Disclosure, 31 October 2005, para. 3; *Karemera et al.*, Decision on Motion for Reconsideration or Certification to Appeal Decision on Motion for Order Allowing Meeting with Defence Witness, 11 October 2005, para. 8 (note also the authorities cited in footnotes contained within that paragraph).

⁵ Decision on Certification to Appeal Mr. O'Donnell Decision, para. 3; See also *Karemera et al.*, Case No. ICTR-98-44-T, Decision on the Defence Motion for Reconsideration of Sanctions Imposed on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago, 10 October 2003, para 6.

⁶ Mugiraneza Motion, paras. 3-12, 18.

⁷ Prosper Mugiraneza's 11th Anniversary Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay was filed on 6 April 2010; Prosper Mugiraneza's Reply to Prosecutor's Response to Prosper Mugiraneza's 11th Anniversary Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay was filed on 15 April 2010.

⁸ Mugiraneza Motion, paras. 3-4.

⁹ Mugiraneza Motion, para. 13.

¹⁰ The section regarding Judge Short's dissenting opinion (Mugiraneza Motion, para. 13) is a sub section of the section headed, II Reasons for Reconsideration or Certification on Issue 1.

basis of the reasoning in the dissenting opinion, any alleged error or insufficiency of reasoning in that dissenting opinion cannot form a basis for reconsideration.

The Request for Certification to Appeal

7. Mugiraneza has applied for certification to appeal the Impugned Decision under Rule 72 (B)(ii) of the Rules of Procedure and Evidence.¹¹ The Impugned Decision was not rendered following a preliminary motion to which Rule 72(B) applies.¹² The Chamber has therefore considered Mugiraneza's application pursuant to Rule 73(B).

8. Pursuant to Rule 73(B) leave to file an interlocutory appeal of a decision may be granted if the issue involved "would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial" and where "an immediate resolution by the Appeals Chamber may materially advance the proceedings". Even where these criteria are met, the decision to certify is discretionary and should remain exceptional.¹³

9. In deciding whether to grant leave to appeal, Trial Chambers do not consider the merits of the challenged decision. Rather, a Chamber's inquiry under Rule 73(B) will involve only a consideration of whether the criteria outlined in the sub-Rule have been satisfied.¹⁴

10. Mugiraneza submits that if the Appeals Chamber found that the Trial Chamber erred in holding that Mugiraneza's right to a trial without undue delay had not been violated it could significantly affect the outcome of the trial and would materially advance the proceedings as it could result in the dismissal of the Indictment against him and thereby speed up the judgement drafting process.¹⁵ Mugiraneza further claims that if the Appeals Chamber found that his right to a trial without undue delay had been violated it would materially advance the proceedings to decide the appropriate remedy prior to the delivery of the judgement.¹⁶

¹¹ Unless otherwise specified, all further references to Rules in this Decision are to the Rules of Procedure and Evidence.

¹² In this regard the Chamber considers the Prosecution Submissions at paragraphs 6-15 of the Prosecution Response moot.

¹³ Decision on Certification to Appeal Mr. O'Donnell Decision, para. 12; Decision on Casimir Bizimungu's Request for Certification to Appeal the Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision Dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government, 22 May 2007, para. 6, ("Decision on Casimir Bizimungu's Request"); See *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Certification to Appeal Decision on Witness Proofing (TC), 14 March 2007, para. 4.

¹⁴ Decision on Certification to Appeal Mr. O'Donnell Decision, para. 13; Decision on Casimir Bizimungu's Request, para. 7; see e.g., Decision on Bicumampaka's Request Pursuant to Rule 73 for Certification to Appeal the 1 December 2004 'Decision on the Motion of Bicumampaka and Mugenzi for Disclosure of Relevant Material' (TC), 4 February 2005, para. 28 ("Decision on Bicumampaka's Request for Certification"); see also, *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for Voir Dire Proceeding (TC), 20 June 2005, para. 4.

¹⁵ Mugiraneza Motion, paras. 2, 14-15, 19.

¹⁶ Mugiraneza Motion, paras. 2, 16-17, 19.

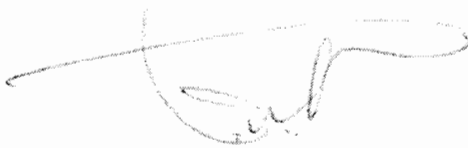
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PARTIALLY DISSENTING OPINION OF JUDGE EMILE FRANCIS SHORT

1. I am in agreement with the decision of the majority that Mugiraneza's request for reconsideration of the Impugned Decision should be denied. However, I am unable to agree with the majority regarding Mugiraneza's request for certification to appeal the Impugned Decision. I respectfully set out my dissenting opinion.

2. If the Appeals Chamber were to find that the Trial Chamber erred in holding that Mugiraneza's right to a trial without undue delay had not been violated, then the Appeals Chamber may also find that the appropriate remedy is dismissal of the Indictment against him. Although I do not believe that this is the appropriate remedy under the circumstances of this case, such an outcome could affect the outcome of the trial and "an immediate resolution by the Appeals Chamber may materially advance the proceedings." Thus, I am of the view that Mugiraneza's request meets the standard pursuant to Rule 73(B), and I would grant Mugiraneza's application for certification to appeal.

31 August 2010, in English.

A handwritten signature in black ink, appearing to read 'Emile Francis Short', with a long horizontal flourish extending to the left.

Emile Francis Short Judge

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11. The Chamber has heard all the evidence in Mugiraneza's case and is currently at an advanced stage of deliberations and judgement drafting. As a result, the Chamber, emphasising the discretionary nature of certification to appeal, does not consider that an immediate resolution by the Appeals Chamber would materially advance proceedings at this stage. Consequently, the Chamber need not consider whether the Impugned Decision involves an issue which would significantly affect the fair and expeditious conduct of the proceedings, or the outcome of the trial. The Chamber therefore finds, Judge Short dissenting, that the Defence has failed to meet the criteria for certification under Rule 73(B).

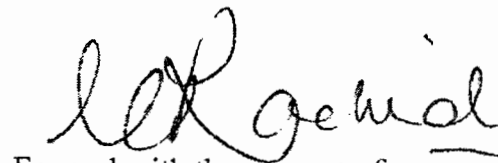
FOR THESE REASONS, the Chamber, Judge Short dissenting with respect to the request for certification to appeal,

DENIES the Motion.

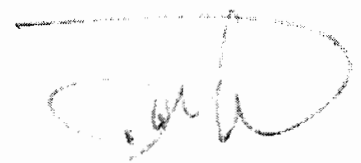
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Khalida Rachid Khan
Presiding Judge



For and with the consent of
Lee Gacuiga Muthoga
Judge



Emile Francis Short
Judge

[Seal of the Tribunal]

