

**THE TRIAL CHAMBER**

Case No: STL-11-01/T/TC

Before: Judge David Re, Presiding
Judge Janet Nosworthy
Judge Micheline Braidy
Judge Walid Akoum, Alternate Judge
Judge Nicola Lettieri, Alternate Judge

Registrar: Mr Daryl Mundis

Date: 12 May 2014

Original language: English

Classification: Public

**DECISION GRANTING CERTIFICATION TO APPEAL THE TRIAL CHAMBER'S
DECISION SCHEDULING THE DATE FOR THE RECOMMENCEMENT OF
TRIAL**

(Extract from Official Public Transcript of Hearing on 12 May 2014, page 77, line 1 to page 80, line 11)

This is a decision on the application by counsel for Mr. Hassan Habib Merhi for certification for interlocutory appeal of the Trial Chamber's decision today setting the recommencement date of trial of Wednesday, the 18th of June, 2014.

Upon delivering the oral decision setting the date of trial which is an oral reasoned decision and from which there will be no written decision, the Trial Chamber asked counsel for Mr. Merhi if they wished to appeal the decision. They answered in the affirmative. And the Prosecution counsel said that they were taking no position on the application.

Under Rule 9 of the Rules of Procedure and Evidence, the Trial Chamber may, proprio motu or in good cause being shown, enlarge or reduce any time prescribed by the Rules. The normal time-period for seeking certification for an interlocutory appeal is seven days. The Trial Chamber in the circumstances here, proprio motu, is reducing that time to today for two reasons. Firstly, we are here in the Status Conference and we were able to engage in a

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dialogue with Defence counsel as to what any proposed question or issue for certification would be; and secondly, in view of the decision we have made, that is, to set a trial date for Wednesday, the 18th of June, abridging the time to today for certifying the issue for appeal would allow the Appeals Chamber to deal with the issue before the date of resumption of trial, and that is to deal with the issue one way or another, that is, to affirm the decision of the Trial Chamber or to overturn it.

The Special Tribunal's Rules of Procedure and Evidence specify that these types of orders and decisions, that is, administrative orders such as setting a trial date, are generally without interlocutory appeal. In other words, they fall within the Trial Chamber's discretion. Generally, the parties cannot appeal such decisions during trial but have to wait until the final judgment before appealing.

Under Rule 126 of the Rules of Procedure and Evidence, a party should apply to the Trial Chamber for certification for interlocutory appeal. The decision must involve an issue that would, one, significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and two, for which an immediate resolution by the Appeals Chamber may materially advance the proceedings. The two parts of the test are cumulative and both must be satisfied before the Trial Chamber can certify a decision for interlocutory appeal.

Having considered the nature of the decision, the Trial Chamber is satisfied that the decision of itself satisfies both parts of the test in Rule 126(C). The order just issued setting a date for the recommencement of the trial involves an issue that would significantly affect the fair and expeditious conduct of the proceedings. If the Trial Chamber's decision is wrong, counsel for Mr. Merhi might find themselves in the situation of having to re-start the trial without the necessary preparation for trial. This would significantly affect the fair and expeditious conduct of the trial. Additionally, an immediate resolution by the Appeals Chamber may materially advance the proceedings in this case. This is because if the trial started in mid-June and the Appeals Chamber later determined in an appeal against judgment that the decision was wrong and that Mr. Merhi's rights had been prejudiced, this would necessarily mean that a huge amount of time and resources would have been wasted on a fatally compromised trial.

The Trial Chamber must itself frame the issue or question for certification for appeal. That question or issue is formulated by the Trial Chamber -- sorry. That issue or question, as

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formulated by the Trial Chamber, is the issue that the Appeals Chamber determines on appeal. It is not necessarily that posed by the party seeking certification for appeal.

The Trial Chamber will therefore certify for interlocutory appeal the issue of the start of the trial proceedings on the date just set, which implicitly includes what could be described as the modalities described in the decision itself, that is, all those matters connected with how the Prosecution plans to run its case in the three groups of witnesses, groups 1, 2, and 3.

Having said that, the issue which the Trial Chamber will certify for appeal will follow. I explain that we are certifying a broadly worded question or issue which will allow Defence counsel to develop their arguments in the appeal brief around the question we propose to certify, and it will, we are confident, allow counsel for the Defence, as expressed in the questions which Mr. O' Shea just put to us, on an appeal brief. The question is therefore:

"Did the Trial Chamber err in fixing the 18th of June, 2014, as the date for resumption of the trial?"

Certification to appeal having been granted, any party wishing to file an appeal has seven days to do so, as specified in Rule 126 (E) of the Rules. That, of course, is seven days from the rendering of this decision orally in court today. This is the decision. There won't be a written decision, so according to Rule 126 (E) and Rule 9, you have seven days to file the appeal.

[...]

PRESIDING JUDGE RE: I add that the decision on certification is a unanimous decision of the Trial Chamber.

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