



Mechanism for International Criminal Tribunals

Case No. MICT-12-25-R14.1

Date: 22 October 2015

Original: English

IN THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William H. Sekule
Judge Florence R. Arrey

Registrar: Mr. John Hocking

Decision of: 22 October 2015

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

**DECISION ON UWINKINDI'S REQUEST FOR
CERTIFICATION TO APPEAL THE DECISION DENYING HIS
REQUEST FOR STAY OF PROCEEDINGS AND FOR ORAL
HEARING**

The Office of the Prosecutor:

Hassan Bubacar Jallow
James J. Arguin
François Nsanzuwera

Counsel for Jean Uwinkindi:

Gatera Gashabana

Received by the Registry
Mechanism for International Criminal Tribunals
22/10/2015 12:42

A handwritten signature in black ink, appearing to read 'McCall Carter', written over a rectangular box.

A small, handwritten mark or signature in the bottom right corner of the page.

THE TRIAL CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Trial Chamber” and “Mechanism”, respectively);

BEING SEISED of “*Demande de certification de l’appel en vertu des articles 79C et 80B du Règlement de Procédure et Preuve relative à la Décision rendue par la Chambre de première instance le premier octobre 2015 dans le dossier Uwinkindi Jean*”, filed by Counsel for Jean Uwinkindi on 7 October 2015 (“Application”), in which Uwinkindi seeks certification to appeal the Trial Chamber’s “Decision on Uwinkindi’s Motion for a Stay of Proceedings before the High Court of Rwanda, an Oral Hearing, and Other Related Matters” issued on 1 October 2015 (“Impugned Decision”);¹

NOTING that in the Impugned Decision, the Trial Chamber, *inter alia*, denied Uwinkindi’s requests for a stay of the proceedings before the High Court of Rwanda and to present oral arguments before the Trial Chamber in relation to his revocation request;²

NOTING Uwinkindi’s submissions that the Trial Chamber erred in exercising its discretion to decide on Uwinkindi’s request for revocation without an oral hearing³ and in finding that there are no exceptional circumstances that would require ordering a stay of the proceedings before the Rwandan Courts;⁴

NOTING Uwinkindi’s submissions that a stay of the proceedings before the Rwandan Courts is necessary and that presenting oral arguments before the Trial Chamber are issues that would significantly affect the fair and expeditious conduct of the proceedings and for which a resolution by the Appeals Chamber would advance the proceedings (“Issues”);⁵

NOTING the “Prosecution’s Response to Uwinkindi’s Motion for Certification of Appeal”, filed on 12 October 2015 (“Response”), in which the Prosecution opposes the Application and submits that Uwinkindi fails to show that the requirements for certification are met for either of the two findings he seeks to appeal;⁶

NOTING the “*Requête tendant à obtenir du Président de la Chambre l’autorisation de répliquer à la réponse du Procureur sur la demande de certification de l’appel*”, filed by Uwinkindi on

¹ Application, paras. 4, 47.

² Impugned Decision, paras. 21-24, 26, 27.

³ Application, paras. 11-20, 22-30.

⁴ Application, paras. 31-41, 44-46.

⁵ Application, paras. 21, 42, 43.

⁶ Response, paras. 1, 10.

20 October 2015 (“Reply”), in which Uwinkindi seeks leave to file a reply to the Response and submits additional arguments in support of the Application;⁷

RECALLING that decisions on all motions, other than those challenging jurisdiction, are without interlocutory appeal save with certification by the Trial Chamber, and that under Rule 80(B) of the Rules, the Trial Chamber may grant certification to appeal if the said 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”;

NOTING that Rule 80(B) of the Rules precludes certification unless the Trial Chamber finds that both of its requirements are satisfied,⁸ and that, even where both requirements are satisfied, certification is not automatic and that it remains at the discretion of the Trial Chamber;⁹

NOTING that, when determining whether to grant leave to appeal, the Trial Chamber is “not concerned with whether a decision was correctly reasoned or not”;¹⁰

⁷ Reply, paras. 1-38. In accordance with Rule 153(A) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), a reply shall be filed within seven days of the filing of the response with the leave of the relevant Chamber. The Trial Chamber finds it in the interests of justice to grant leave for Uwinkindi to file the Reply and to recognize, pursuant to Rule 154 (A)(ii) of the Rules, the filing as validly done.

⁸ See, e.g., *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Application for Certification to Appeal Denial of Third Motion to Re-Open Defence Case, 15 January 2015 (“Karadžić Decision of 15 January 2015”), p. 3 (interpreting the parallel rule for certification (Rule 73(B)) of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia), referring to *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecution Request for Certification for Interlocutory Appeal of ‘Decision on Prosecutor’s Motion Seeking Leave to Amend the Indictment’, 12 January 2005, p. 1. See also *Prosecutor v. Ratko Mladić*, Case No. IT-09-92-T, Decision on Defence Motion for Certification to Appeal the Decision on the Admission of the Evidence of Milan Tutorić, 15 July 2015 (“Mladić Decision of 15 July 2015”), para. 4.

⁹ *The Prosecutor v. Augustin Ndirabatware*, Case No. ICTR-99-54-T, Decision on Defence Motion for Certification to Appeal the Decision of 14 May 2012 on the Admission of Written Statements, 21 June 2012 (“Ndirabatware Decision of 21 June 2012”), para. 7 (interpreting the parallel rule for certification (Rule 73(B)) of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda (“ICTR Rules”)); *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-PT, Decision on Defence Application for Certification to Appeal Decision on Preliminary Motion Alleging Defects in the Form of the Amended Indictment, 28 March 2011, para. 3 (interpreting Rule 72(B)(ii) of the ICTR Rules).

¹⁰ *Karadžić Decision of 15 January 2015*, p. 3, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Lukić Motion for Reconsideration of Trial Chamber’s Decision on Motion for Admission of Documents from Bar Table and Decision on Defence Request for Extension of Time for Filing of Final Trial Briefs, 2 July 2008, para. 42; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Defence Application for Certification of Interlocutory Appeal of Rule 98 bis Decision, 14 June 2007, para. 4; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Nikolić and Beara Motions for Certification of the Rule 92 quater Motion, 19 May 2008, para. 16; *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Motion for Certification of Rule 98 bis Decision, 15 April 2008, para. 8; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Prosecution Motion for Certification of Trial Chamber Decision on Prosecution Motion for *Voir Dire* Proceeding, 20 June 2005, para. 4. See also *Mladić Decision of 15 July 2015*, para. 5; *Ndirabatware Decision of 21 June 2012*, para. 8, referring, *inter alia*, to *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal, 16 February 2006, para. 4; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Bicamumpaka’s Request Pursuant to

CONSIDERING, therefore, that the Trial Chamber need not address Uwinkindi's arguments whether in the Impugned Decision the Trial Chamber erred in law or abused its discretion in rejecting Uwinkindi's requests for stay of proceedings and oral arguments;

CONSIDERING that holding an oral hearing is likely to delay rather than expedite the proceedings;

NOTING further that, in the Impugned Decision, the Trial Chamber stated that, at this stage, it is anticipated that Uwinkindi's request for the revocation of the referral of his case will be adjudicated prior to the completion of the trial and appeal proceedings against him in Rwanda;¹¹

NOTING that the Trial Chamber has filed its decision on Uwinkindi's request for revocation;¹²

FINDING, therefore, that Uwinkindi has failed to show that an immediate resolution of the Issues by the Appeals Chamber may materially advance the proceedings;

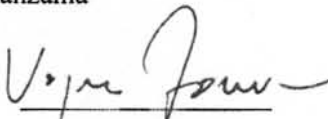
CONSIDERING, therefore, that the cumulative requirements for certification to appeal have not been met;

PURSUANT to Rule 80(B) of the Rules,

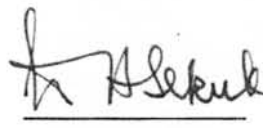
HEREBY DENIES the Application.

Done in English and French, the English version being authoritative.


Done this 22nd day of October 2015,
At Arusha,
Tanzania



Judge Vagn Joensen
Presiding Judge



William H. Sekule
Judge



Florence R. Arrey
Judge



Rule 73 for Certification to Appeal the 1 December 2004 Decision on the Motion of Bicamumpaka and Mugenzi for Disclosure of Relevant Material', 4 February 2005, para. 28.

¹¹ Impugned Decision, para. 23.

¹² Decision on Uwinkindi's Request for Revocation, 22 October 2015, para. 42.