



UNITED NATIONS
NATIONS UNIES

ICTR-98-44-T
24-9-2009
(47917-47915)

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International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

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

Registrar: Adama Dieng

Date: 24 September 2009

THE PROSECUTOR

v.

Édouard KAREMERA
Matthieu NGIRUMPATSE
Joseph NZIRORERA

Case No. ICTR-98-44-T

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**DECISION ON ÉDOUARD KAREMERA'S MOTION FOR CERTIFICATION TO
APPEAL THE "DECISION ON THE PROSECUTOR'S MOTION FOR ADMISSION
OF I-P-32 INTO EVIDENCE PURSUANT TO RULE 89 (C)"**

Rules 73 B) of the Rules of Procedure and Evidence

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INTRODUCTION

1. On 2 September 2009, this Chamber admitted into evidence document I-P-32 and its accompanying documentation.¹ On 8 September 2009, Édouard Karemera filed an application for certification to appeal the Impugned Decision.² The Prosecution opposes the Motion.³

DELIBERATIONS

2. Rule 73(B) of the Rules provides that certification to appeal may only be granted if the 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.⁴ The moving party must demonstrate that both requirements of Rule 73(B) are satisfied, and even then, certification to appeal must remain exceptional.⁵

3. Édouard Karemera submits that certification to appeal the Impugned Decision should be granted when it touches upon crucial issues relating to the admissibility of evidence, and that a ruling of the Appeals Chamber on the issue would materially advance the proceedings.⁶ Karemera contends that it is absolutely decisive that the Appeals Chamber review this Chamber's jurisprudence regarding admission of evidence, notably upon the issues of the admissibility of fresh evidence presented by the Prosecution after the close of its case; the

¹ *The Prosecutor v. Édouard Karemera, Matthieu Ndirumpatse and Joseph Nzirorera*, Case No. ICTR-98-44-T ("*Karemera et al.*"), Decision on Prosecutor's Motion for Admission of I-P-32 into Evidence Pursuant to Rule 89 (C), 2 September 2009 ("Impugned Decision").

² Requête de Édouard Karemera pour une certification d'appel de la "Decision on the Prosecutor's Motion for Admission of I-P-32 Into Evidence Pursuant to Rule 89 (C)", filed on 8 September 2009 but dated 7 September 2009, ("*Karemera's Motion*").

³ Prosecutor's Response to the "Requête de Édouard Karemera pour une certification d'appel de la "Decision on the Prosecutor's Motion for Admission of I-P-32 Into Evidence Pursuant to Rule 89 (C)", 9 September 2009 ("*Prosecutor's Response*").

⁴ *The Prosecutor v. Théoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, and Anatole Nsengiyumva*, Case No. ICTR-98-41-T ("*Bagosora et al.*"), Decision on Motion for Reconsideration Concerning Standards for Granting Certification of Interlocutory Appeal, 16 February 2006, para 4.

⁵ *The Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Vlastimir Dordević, and Sreten Lukić*, Case No. IT-05-87-T ("*Milutinović et al.*"), Decision on Prosecution Request for Certification of Interlocutory Appeal of Decision on Admission of Witness Philip Coo's Expert Report, 30 August 2006; *Karemera and 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 Édouard Karemera's Application for Certification to Appeal the Decision Denying his Motion for Admission of an Expert Witness, 1 July 2009, para. 3.

⁶ Karemera's Motion, para. 5.

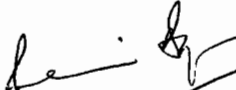
admissibility of a non authentic document; and, the possibility for an affidavit produced only in June 2009 to confer reliability to a document that was previously found unreliable.⁷


4. The Chamber recalls that the Appeals Chamber has clearly stated that it is first and foremost the responsibility of Trial Chambers, as triers of fact, to determine which evidence to admit during the course of the trial and that it is not for the Appeals Chamber to assume this responsibility.⁸ According to the Appeals Chamber, certification on questions of admissibility of evidence should not ordinarily be granted, but is rather the "absolute exception".⁹

5. The Chamber finds that in the present case, there is no such exception. The Chamber considers that Édouard Karemera has made no argument that an incorrect legal standard was applied by the Chamber, or that the Chamber made an error of fact in applying that legal standard. The Chamber notes that the Defence simply disagrees with the manner in which it has exercised its discretion, which is not a requirement to grant certification to appeal.¹⁰

**FOR THESE REASONS, THE CHAMBER
DISMISSES Édouard Karemera's Motion.**

Arusha, 24 September 2008, done in English.


Dennis C. M. Byron
Presiding Judge


Gberdao Gustave Kam
Judge


Vagn Joensen
Judge

[Seal of the Tribunal]



⁷ Karemera's Motion, para. 6.

⁸ *Pauline Nyiramasuhuko v. The Prosecutor*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5.

⁹ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004 ("Nyiramasuhuko decision of 4 October 2004"), para. 5; *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Request for Reconsideration (AC), 27 September 2004, para. 10.

¹⁰ See *Pauline Nyiramasuhuko v. The Prosecutor*, Decision on Pauline Nyiramasuhuko's Appeal on the Admissibility of Evidence (AC), 4 October 2004, para. 5.