

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No: MICT-13-38-T

Date: 13 June 2023

Original: English

IN THE TRIAL CHAMBER

Before:

Judge Iain Bonomy, Presiding
Judge Mustapha El Baaj
Judge Margaret M. deGuzman
Judge Ivo Nelson de Caires Batista Rosa, Reserve Judge

Registrar:

Abubacarr Tambadou

THE PROSECUTOR

v.

FÉLICIEN KABUGA

PUBLIC

**PROSECUTION REQUEST FOR CERTIFICATION
TO APPEAL FURTHER DECISION ON
FÉLICIEN KABUGA'S FITNESS TO STAND TRIAL**

The Office of the Prosecutor

Serge Brammertz
Rashid S. Rashid
Rupert Elderkin

Counsel for Félicien Kabuga

Emmanuel Altit
Françoise Mathe

1. Pursuant to Rule 80(B),¹ the Trial Chamber should grant certification to appeal the Decision² insofar as it determines that Kabuga is not fit for trial and is very unlikely to regain fitness in the future.³

2. The Decision meets the cumulative requirements of Rule 80(B). The Appeals Chamber's jurisprudence is unequivocal that the issue of an accused's fitness to stand trial is of such importance that it may generally be regarded as an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial.⁴ The Trial Chamber's lack of unanimity on this central issue underscores the necessity of certification.

3. Immediate resolution by the Appeals Chamber of the issue of Kabuga's fitness to stand trial "may materially advance the proceedings",⁵ which otherwise stand at an impasse. A decision overturning the finding of unfitness would allow the criminal trial against Kabuga to proceed. Furthermore, assuming that the Defence may seek certification to appeal against the alternative finding procedure but not the fitness determination, it is critical that the Appeals Chamber is enabled to review both interlinked aspects of the impugned Decision.⁶ An appeal that focuses only on the alternative finding procedure without addressing the issue of fitness would artificially narrow the scope of the Appeals Chamber's review and limit its ability to materially advance the proceedings.

4. For the foregoing reasons, the Trial Chamber should grant certification to appeal the Decision that Kabuga is not fit for trial and is very unlikely to regain fitness in the future.

Word Count: 342

¹ MICT/1/Rev.7, 4 December 2020 ("Rules").

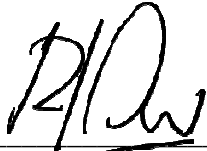
² Further Decision on Félicien Kabuga's Fitness to Stand Trial, 6 June 2023 ("Decision").

³ Decision, para.39.


⁴ Decision on Félicien Kabuga's Motion for Certification to Appeal the Decision of 13 June 2022 ("First Certification Decision"), 23 June 2022, p.2, *citing e.g., Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008, para. 34.

⁵ First Certification Decision, p.2.

⁶ All three Judges of the Trial Chamber agree that the case should proceed, albeit following different procedures. *See* Decision, paras. 47, 49-50, 57; Dissent, paras.26-27, 40-42.



Rashid Rashid
Senior Trial Attorney



Rupert Elderkin
Senior Trial Attorney

Dated this 13th day of June 2023
At Arusha, Tanzania



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