

UNITED
NATIONS

MICT-12-25-R14.1
12-10-2015
(2049 - 2045)

2049
JN



Mechanism for International
Criminal Tribunals

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

Date: 12 October 2015

Original: English

THE TRIAL CHAMBER

Before: Judge Vagn Joensen, Presiding
Judge William Hussein Sekule
Judge Florence Rita Arrey

Registrar: Mr. John Hocking

PROSECUTOR

v.

JEAN UWINKINDI

PUBLIC

PROSECUTION'S RESPONSE TO UWINKINDI'S MO-
TION FOR CERTIFICATION OF APPEAL

Office of the Prosecutor:
Hassan Bubacar Jallow
James J. Arguin
François Nsanzuwera

Counsel for Jean Uwinkindi:
Gashabana Gatera

Received by the Registry
Mechanism for International Criminal Tribunals

12/10/2015 18:42

A handwritten signature in black ink, consisting of a large, stylized initial 'W' followed by a long, sweeping horizontal line.

1. The Trial Chamber should reject Uwinkindi's motion for certification.¹ He has not shown that the requirements for certification set out in Rule 80(B) are met for either of the two findings he seeks to appeal: the Trial Chamber's refusal to stay the Rwandan proceedings and its refusal to order an oral hearing.²

2. Under Rule 80(B) a party requesting certification must show two cumulative threshold requirements: (1) that the decision involves an issue that would significantly affect a) the fair and expeditious conduct of the proceedings or b) the outcome of the trial; and (2) that in the view of the trial chamber the immediate resolution of the matter may materially advance the proceedings. Even where these two threshold requirements are met, a trial chamber still has residual discretion as to whether to grant certification.³ Also, a request for certification is not concerned with whether a decision was correctly reasoned; rather this question is to be decided by the Appeals Chamber.⁴

3. Uwinkindi disregards this law and neither addresses the threshold requirements nor the Trial Chamber's residual discretion. Instead he exclusively and irrelevantly discusses whether the Trial Chamber's decision was correct and thus the merits of the appeal.⁵ Uwinkindi therefore failed to show that the requirements for certification are met. His Motion should be denied on that basis.

¹ Demande de certification de l'appel en vertu des articles 79(C) and 80(B) du règlement du procédure et preuve relative à la décision rendue par la Chambre de Premier Instance le premier Octobre 2015 dans le dossier Uwinkindi Jean, 5 October 2015 (Motion).

² Decision on Uwinkindi's Motion for a Stay of Proceedings before the High Court of Rwanda, an Oral Hearing, and Other Related Matters, 1 October 2015, (Impugned Decision), paras. 23, 26, 27.

³ *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-04-84bis-T, Decision on Prosecution Motion for Certification of Decision on Prosecution Motion to admit Evidence from the Bar Table, Revise its Rule 66ter Witness and Exhibit Lists and Admit Evidence Pursuant to Rule 92ter, 15 March 2012 (*Haradinaj Decision*), para. 9.

⁴ *Haradinaj Decision*, para. 9; *Prosecutor v. Jovica Stanišić et al.*, Case No. IT-03-69-T, Decision on Stanišić Defence Request for Certification to Appeal Decision Denying Extension of Time to File Rejoinder Motions, 20 March 2013, para. 7.

⁵ Motion, paras. 16 *et seq.*, 31 *et seq.*

4. In all events, the record and the Trial Chamber's decision demonstrate that the first threshold requirements are not met for either impugned finding. Neither finding involves an issue that would affect either the fairness or expeditiousness of the proceedings or their outcome. Since the first threshold requirements are not met for either of the Trial Chamber's findings, there is no need to consider whether the remaining requirements for certification are met because, as noted, the requirements are cumulative.

5. The first threshold requirements are not met with regard to the Trial Chamber's decision not to order a stay of Uwinkindi's Rwandan proceedings. That decision does not involve an issue that would affect the fairness, expeditiousness, or outcome of the proceedings. That decision could only impact the fairness of the revocation proceedings, if, without a stay, the revocation could become impossible because the Rwandan judiciary might issue a final conviction or acquittal in Uwinkindi's case before the Trial Chamber decides on the revocation.⁶ The Trial Chamber indicated that no such danger exists because it anticipated issuing a decision before the end of Uwinkindi's proceedings in Rwanda,⁷ and Uwinkindi has not even attempted to demonstrate any error in the Trial Chamber's reasoning. Therefore, the issue of a potential stay of the Rwandan proceedings does not affect the fairness of the revocation proceedings.

6. Likewise, the Trial Chamber's decision denying the stay does not have a negative impact on the expeditiousness of the proceedings nor affect the outcome. Therefore, with regard to Uwinkindi's request to stay the Rwandan proceedings, the first threshold requirement for certification is not met.

7. The first threshold requirements also are not met with regard to the Trial Chamber's denial of Uwinkindi's request for an oral hearing, because this finding also

⁶ Impugned Decision, para. 23; see Rule 14(C) (providing that revocation is only possible before the accused has been found guilty or acquitted).

⁷ Impugned Decision, para. 23.

does not affect the fairness, expeditiousness, or outcome of the proceedings. Uwinkindi has never indicated what issues he would raise in an oral hearing that he could not already have raised in his written arguments. In particular, he claims that, during the oral hearing, he would inform the Trial Chamber about the problems with his defence counsel and the resulting issues as to examination and cross-examination of witnesses.⁸ These matters, however, have been already raised in Uwinkindi's many filings⁹ and the monitoring reports.¹⁰ Since Uwinkindi has not shown what new matters he would raise at any oral hearing (and could not have raised in his written arguments), there is no basis for finding that the denial of an oral hearing involves an issue that would impact on the fairness of the proceedings or their outcome.

8. Nor does the denial of an oral hearing negatively impact the expeditiousness of the proceedings. If anything, scheduling an oral hearing on Uwinkindi's revocation request likely would further delay the proceedings. Arrangements would need to be made for Uwinkindi's and his counsel's presence in Arusha, as well as for the presence of all members of the Trial Chamber to consider Uwinkindi's unspecified oral submissions.

9. In addition, because Uwinkindi requested an oral hearing in order to be able to personally "describe" his situation,¹¹ his request should be regarded as a request to present evidence. Certification of decisions on the admission of evidence generally

⁸ Motion paras. 22-24.

⁹ *E.g.* Reply to Prosecution's Submission Received on 25 August 2015 at 1430 Hours, 25 August 2015, p. 4; Brief in Support of Jean Uwinkindi's Request for Revocation of Referral Order, 2 August 2015, paras. 14 *et seq.*, 18 *et seq.*, 68 *et seq.*, 87 *et seq.*, 131 *et seq.*, 138 *et seq.*; Communication à la Chambre des éléments de preuve et information supplémentaires, conformément à l'article 72d du règlement de procédure de preuve, 28 September 2015, paras. 6 *et seq.*, 16 *et seq.*, 23 *et seq.*

¹⁰ *See, e.g.*, Monitoring Report for March 2017, 30 April 2015, paras. 7 *et seq.*; Monitoring Report for July 2015, 21 August 2015, paras. 11 *et seq.*

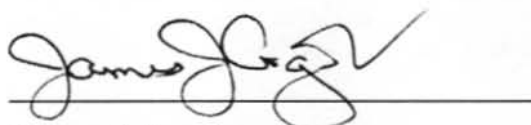
¹¹ Request Seeking Order Inviting Parties to Present Oral Arguments (Oral Hearing) Before the Chamber, 22 August 2015, para. 10.

are granted only in exceptional circumstances.¹² In this case, no such exceptional circumstances have been shown or exist. This reinforces the conclusion that certification should not be granted.

10. In conclusion, the Trial Chamber should deny Uwinkindi's request for certification for both impugned findings because the cumulative requirements for certification are not met.

Word Count: 1159

Dated this 12th day of October 2015 at Arusha, Tanzania.

A handwritten signature in black ink, appearing to read 'James J. Arguin', is written over a horizontal line.

James J. Arguin
Chief, Appeals and Legal Advisory Division
(Pursuant to the MICT Prosecutor's 26 July
2012 Interim Designation)

¹² *Prosecutor v. Goran Hadžić*, Case No. IT-04-75-T, Decision on Defence Motion for Certification to Appeal Trial Chamber's Decision Concerning Admission of Prior Inconsistent Statements, 21 July 2013, para. 7.