



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

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UNITED NATIONS
NATIONS UNIES

TRIAL CHAMBER II

OR: ENG

Before: Judge William H. Sekule
Judge Yakov A. Ostrovsky
Judge Taffazzal H. Khan

Registry: Mr. Gregory Townsend
Mr John Kiyeyeu

Decision of: 4 May 1999

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ICTR
CRIMINAL REGISTRY
RECEIVED

**THE PROSECUTOR
VERSUS
CASIMIR BIZIMUNGU**

Case No. ICTR-99-45-DP

**DECISION ON AN EXTREMELY URGENT APPLICATION FILED BY THE
DEFENSE PURSUANT TO RULE 40BIS (K) OF THE RULES
FOR AN ORDER TO APPLY THE PROVISIONS OF RULE 40 BIS (L) OF THE
RULES**

The Office of the Prosecutor:

Mr. Don Webster

For Casimir Bizimungu

Mr Loomu Ojaare

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME A L'ORIGINAL PAR NOUS
NAME / NOM: JOHN M. KIYEYEU
SIGNATURE: [Signature] DATE: 04.05.99

The International Criminal Tribunal for Rwanda, ("Tribunal");

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Yakov A. Ostovsky and Judge Tafazzal H. Khan;

BEING SEIZED OF an extremely urgent Application filed on 14 April 1999 by the Defence pursuant to rule 40 *bis* (K) of the Rules of Procedure and Evidence ("the Rules") for an order to apply the provisions of rule 40 *bis* (L) of the Rules. Specifically, that the provisional detention of CASIMIR BIZIMUNGU ("the Suspect") be carried out in conformity with rule 40 *bis* (L) of the Rules and that the Registrar of the Tribunal as well as the Commanding officer of the UN Detention Unit at Arusha be directed and ordered to comply;

TAKING INTO ACCOUNT the Declaration of Mr E.N.K. Loomu- Ojaare ("the Declaration") dated 13 February 1999 in which he, *inter alia*, stated that he had sent a letter dated 17 March 1999 to the Registrar complaining about the isolation of the Suspect. In that letter, he also sought clarification whether the suspect was being held in solitary confinement;

WHEREAS in response, the Registrar in a letter dated 18 March 1999, acknowledged detaining the suspect in a special wing of the ICTR Detention Facilities but categorically stated that the suspect was being held as a suspect but not as an accused person;

CONSIDERING a letter dated 16 April 1999 from the Registrar to the Presiding Judge, ("the Registrar's Submission"), in which the Registrar stated his position. Specifically, the Registrar explained that a legal distinction exists between a "suspect" and an "accused" person. Additionally, as a matter of policy and in light of any security considerations, various categories of detainees are segregated. Hence, persons against whom no charges have been preferred should be treated differently from those charged with serious offences, particularly, in terms of housing;

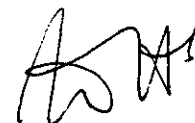
TAKING INTO CONSIDERATION rules 40 *bis* (K), 40 *bis* (L), 64 of the Rules and rules 38, 39, 42 and 64 of the Rules of Detention of Persons Awaiting Trial or Appeal Before the Tribunal or otherwise Detained on the Authority of the Tribunal ("the Detention Rules");

KEEPING IN MIND Article 20 of the Statute regarding the rights of the accused, which are also applicable to suspects;

HAVING HEARD the parties during an *inter partes* hearing held on 19 April 1999;

Submission by the Defence

The Defence made preliminary remarks on the Registrar's submission suggesting that since the application by the Defence complained about conditions of detention, it should have been brought under rule 64 of the Rules. The Defence disagreed and contended that their application was rightly before the Trial Chamber given that rule 2 of the Rules clearly differentiated between a "suspect" and an "accused." Hence, rule 64 was inapplicable since it pertains only to accused



persons. The Defence further contended:

- (a) That the applicable rule is rule 40 *bis* (K) of the Rules and that the phrase "relative to the propriety of provisional detention" appearing therein should be accorded a wide interpretation and be extended to the mode and manner of detention in respect of which the present application is made;
- (b) That pursuant to rule 40 *bis* (L) of the Rules, it is provided that Rules relating to the detention on remand of accused persons shall apply *mutatis mutandis* to the provisional detention of persons under rule 40 *bis*;
- (c) That considering what is stated in paragraphs 6 and 7 of the Declaration, the Registrar justified the segregation of CASIMIR BIZIMUNGU on the ground that he was a mere 'suspect' which was in contravention of the Rules and the spirit of the law because the Rules do not provide for different detention conditions between a suspect and an accused.
- (d) That this differential detention has detrimentally affected the suspect thereby violating his rights by hampering his free movement within the UN Detention Unit and denying his freedom to religious congregation.

Submission by the Prosecutor

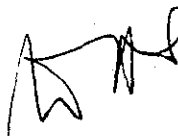
Although this matter did not really concern the Prosecutor, she nevertheless rendered an opinion as a friend of the court and submitted:

- (a) That Rule 40 *bis* (L) of the Rules is applicable to the entire provisions of rule 40 *bis*, which pertains to detained persons thereby encompassing rule 40*bis* (K) of the Rules applicable to accused as well as to suspects;
- (b) That rule 40 *bis* (K) of the Rules addresses only issues of propriety of provisional detention and not conditions of detention. Thus pursuant to rule 64 of the Rules concerning the modification in the conditions of detention, the relevant relief would be given by the President, not by the Trial Chamber.

Submission by the Registrar

Basing his arguments generally upon the Registrar's Submission, the Registrar's representative also made oral submissions. He observed, initially, that there was a distinction between an accused and a suspect in the title of rule 40 *bis* of the Rules. He thus contended:

- (a) That the provisions of rule 40 *bis* (K) of the Rules covered only "propriety of provisional detention" and did not extend to conditions of detention, which are within the scope of rule 40 *bis* (L) of the Rule dealing with matters of detention.
- (b) That as a matter of policy and security, the Registrar separates accused persons from suspects. However, there was an informal request made by the Prosecutor to the Registrar



to separate suspects from accused persons and this has been granted;

(c) That under Article 20 of the Statute and the Rules, no right to intermingle in terms of housing exist. However, pursuant to rules 38, 39, 42 and 64 of the Detention Rules, power is granted to the Registrar in normal circumstances, or a Commanding Officer in times of emergency, to place suspects in segregation on grounds of "preservation of security and good order in the Detention Unit or for the protection of the detainee " or "the proper conduct and operation of the detention unit" respectively.

Rejoinder by the Defence

In reply, the Defence sustained his earlier contentions but conceded that segregation is permitted under rule 64 of the Detention Rules, provided that the suspect is informed about the prohibition of contact, which was not done in the instant case. He argued that both the accused and suspect are entitled to equal treatment before the law, pursuant to article 20 (1) of the Statute. Furthermore, the Defence submitted that there was no proof that any request to segregate suspects, in particular, CASIMIR BIZIMUNGU, was ever made by the Prosecutor to the Registrar. Consequently, the Registrar had misapplied the Detention Rules and failed to comply with the provisions of segregation to which he should adhere.

AFTER HAVING DELIBERATED,

WHEREAS Rule 40 *bis* (K) and (L) of the Rules respectively provide that

(K) During detention, the Prosecutor, the suspect or his Counsel may submit to the Trial Chamber of which the Judge who made the initial order is a member, all applications relative to the propriety of provisional detention or to the suspect's release.

(L) Without prejudice to Sub-Rules (C) to (H), the Rules relating to the detention on remand of accused persons shall apply mutatis mutandis to the provisional detention of persons under this Rule. (...)"

WHEREAS further rule 64 of the Rules provides that :

" Upon his transfer to the Tribunal, the accused shall be detained in facilities provided by the host country or by another country. The President may, on the application of a party, request modification of the conditions of detention of an accused."

The Tribunal has considered rule 40 *bis* (K) of the Rules. It is our view that the phrase " relative to the propriety of provisional detention or to the suspect's release " refers to the legality of the provisional detention, which may render such detention null and void and call for a suspect's release. Additionally, considering the French text of rule 40 *bis* (K) of the Rules, where reference is made to *relatives à la régularité de la détention provisoire*, it is clear that this refers to the regularity of the provisional detention. This would essentially include issues whereby there are challenges pertaining to defects or otherwise of provisional detention.

With regard to the modification of conditions of detention, the Tribunal has addressed itself to



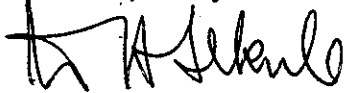
the provisions of rule 40 *bis* (L) of the Rules which are reproduced above for ease of reference. The Tribunal is of the considered opinion that any rule on detention of the accused on remand will automatically be applied to the suspect. Therefore, rule 64 of the Rules, which is specific to modification of conditions of detention on remand as well as the Detention Rules are applicable. To this end, the Tribunal is cognisant of the orders made by the President of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the case of *The Prosecutor vs. -- Blaškic* (IT-95-14-T) dated 3 April 1996 and 17 April 1996. Both Orders were made pursuant to rule 64 of the ICTY Rules. The former dealt with the scope of rule 64 in some detail and ordered the modification in the detention conditions of Blaškic. The latter order permitted the detainee, *inter alia*, to meet his wife, children and Counsel in any place deemed appropriate by the Registrar with a further order being made by the President on 9 January 1997, for Blaškic to have two hours of physical exercise.

In the instant case, the Tribunal observes that the Defence application complains about the segregation of the suspect, the lack of freedom to religious congregation as well as free movement within the premises of the UN Detention Facility. It is the opinion of the Tribunal that these complaints essentially pertain to the modification of the conditions of detention and not the propriety of the provisional detention *per se* as provided in rule 40 *bis* (K) of the Rules. Hence, the Tribunal is of the view that this matter is misplaced and should have been addressed to the President and not the Trial Chamber.

FOR ALL THE ABOVE REASONS, THE TRIBUNAL

1. **DECLARES** that pursuant to rule 40 *bis* (L) and rule 64 of the Rules, the power to modify the conditions of detention at this stage lies with the President.
2. **DISMISSES** the Defence motion and **ORDERS** that the matter be placed before the President as soon as possible to minimise the infringement, if any, of the rights of CASMIR BIZIMUNGU.

Arusha, 4 May 1999



William H. Sekule
Presiding Judge



Yakov A. Ostrovsky
Judge



Tafazzal H. Khan
Judge

(Seal of the Tribunal)

