



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR. ENG

TRIAL CHAMBER II

Before:

Judge William H. Sekule, Presiding
Judge Asoka de Zoysa Gunawardana
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 1 October 2003

THE PROSECUTOR

vs.

Prosper MUGIRANEZA et al

Case No. ICTR-99-50-I

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO EXCLUDE
CUSTODIAL STATEMENT**

The Office of the Prosecutor

Paul Ng'arua
Melinda Y. Pollard
Elvis Bazawule
George Mugwanya
Dennis Mabura (Case Manager)

Defense Counsel for Mugiraneza

Tom Moran
Cynthia J. Cline

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the
"Tribunal");

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Judge Asoka de Zoysa Gunawardana and Judge Arlette Ramaroson (the “Chamber”);

BEING SEIZED of “Prosper Mugiraneza’s Motion to Exclude Custodial Statement,” filed on 5 March 2003 (the “Motion”);

HAVING RECEIVED AND CONSIDERED the “Prosecutor’s Response to Prosper Mugiraneza’s Motion to Exclude Custodial Statement,” filed on 13 March 2003 (the “Prosecutor’s Response”) **AND** “Prosper Mugiraneza’s Reply to the Prosecutor’s Response to Prosper Mugiraneza’s Motion to Exclude Custodial Statement,” filed on 18 March 2003 (the “Defence Reply;”)

CONSIDERING the Statute of the Tribunal (the “Statute”), in particular Article 20 and the Rules of Procedure and Evidence (the “Rules”), specifically Rules 40, 42, 43 and 89;

NOW CONSIDERS the Motion solely on the basis of the written briefs filed by the Parties, pursuant to Rule 73(A) of the Rules.

Defence Submissions

1. The Defence requests the Chamber to order the exclusion from evidence of all the custodial statements made by Mugiraneza because of the Prosecutor’s failure to comply with the provisions of Rules 40, 42 and 43.
2. The Defence argues that the statements given by Mugiraneza while he was in the custody of the Cameroonian authorities were not obtained from him in compliance with the provisions of Rule 42(B). Essentially, the Defence argues that Mugiraneza’s consent to an interrogation by investigators in the absence of counsel was equivocally made.
3. The Defence further argues that the length of detention of Mugiraneza whilst he awaited judicial consideration with regard to his transfer to the Tribunal and detention under Rule 40 was unreasonable and thus his detention was illegal. For this reason, the Defence contends that since the custodial statements were taken during this period of illegal detention, they should be excluded.
4. Finally, the Defence submits that the Prosecution failed to comply with the explicit wording of Rule 43 by failing to inform Mugiraneza that a recording of the interview was being made and that he had a right to clarify or add anything he desired.

Prosecution Submissions

5. The Prosecution essentially argues that there was no violation of Mugiraneza’s rights provided for under Rules 40, 42 and 43 of the Rules.

6. The Prosecution submits that from the interview notes, one can see that on 8, 13 and 19 April 1999, Mugiraneza's answer with regard to his being interviewed in the absence of counsel was unequivocal.

7. With regard to the Defence argument that Mugiraneza's rights under Rule 40 were violated because the Prosecution did not act within a 'reasonable time' after Mugiraneza's detention by Cameroon under Rule 40, the Prosecution argues that it did act within a reasonable time to get Mugiraneza's transfer considering that the application for Mugiraneza's transfer and provisional detention was made eight days after his arrest under Rule 40(A). The Prosecution argues that because Mugiraneza's detention in Cameroon lasted a total of 13 days, it was not unreasonably long so as to be considered illegal. The Prosecution argues that the custodial statements obtained during this time were lawfully obtained.

8. With regard to the violation of Rule 43, the Prosecution argues that when Mugiraneza was being interrogated the recording equipment was in his plain view and periodically the interview was suspended in order to attend to said equipment. The Prosecution argues that failure to inform Mugiraneza that the interrogation was being recorded though not in compliance with Rule 43(iii) is not fatal to the veracity of what was recorded.

9. The Prosecution therefore prays that Mugiraneza's custodial statements be admitted under Rule 89(C) because of their relevance and probative value, when and if the Prosecution decides to use them at trial.

Defence Reply

10. The Defence emphasizes that Mugiraneza's answer to the investigators with regard to his waiver of the right to counsel was unequivocal and the investigators made no effort to clarify Mugiraneza's statement.

11. The Defence argues that with regard to the Rule 40 violation, the Prosecution failed to apply for a judicial determination that there was a cause to arrest and detain Mugiraneza by the Cameroonian authorities within 'a few days' in conformity with international standards.[\[1\]](#)

12. The Defence draws the Chamber's attention to the 20 February 2001 Trial Chamber Judgment in *Delalic* and argues that the delay between when Mugiraneza was arrested on 6 April 1999 and the time when Judge Williams on 19 April 1999 found that there was sufficient evidence to transfer and to continue to detain Mugiraneza was not 'the minimum time necessary.'

AFTER HAVING DELIBERATED

13. The Chamber notes that in essence the Defence seeks the exclusion from evidence of the custodial statements of Mugiraneza made while he was under the custody of the

Cameroonian authorities in April 1999. The Chamber also notes that the Prosecution prays for the admission under Rule 89(C), of the custodial statements of Mugiraneza, when and if it decides to use the said statements during trial. (our emphasis)

14. The Chamber is of the opinion that the Motion is not yet ripe for adjudication and will only be ripe when the Prosecution seeks to use said custodial statements. The Chamber thus finds that because this Motion is on the admissibility into evidence of the custodial statements of Mugiraneza, such a determination will best be made at the trial of the case by the Trial Chamber.

15. For these reasons, the Chamber denies the Motion in its entirety.

FOR ALL THE ABOVE REASONS THE TRIBUNAL:

DENIES the Motion in its entirety.

Arusha, 1 October 2003

William H. Sekule	Asoka de Zoysa Gunawardana	Arlette Ramaroson
Presiding Judge	Judge	Judge

(Seal of the Tribunal)

[1] See Defence Brief at para. 13;
[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CCPR+General+comment+8.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR+General+comment+8.En?OpenDocument)