

ICTR-99-50-I  
23-10-2003  
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Mugiraneza



UNITED NATIONS  
NATIONS UNIES

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:** Mr Adama Dieng

**Date:** 23 October 2003

**The PROSECUTOR**  
v.  
**Prosper MUGIRANEZA**  
*Case No. ICTR-99-50-I*

2003 OCT 23 P 5:57  
JUDICIAL RECORDS SECTION  
ICTR

**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR EQUALITY OF  
ARMS RELATED TO ACCESS TO WITNESSES**

**FOR THE OFFICE OF THE PROSECUTOR:**

Paul Ng'arua  
Melinda Pollard  
Elvis Bazawule  
George Mugwanya

**FOR THE DEFENCE:**

Tom Moran

5/10

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

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

**BEING SEIZED** of "Prosper Mugiraneza's Motion for Equality of Arms Related to Access to Witnesses, filed on 2 October 2003 (the "Motion");

**NOTING** the "Prosecutor's Response to Prosper Mugiraneza's Motion for Equality of Arms Related to Access to Witnesses", filed on 13 October 2003 (the "Response");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence ("the Rules"), particularly Article 20(4)(e) of the Statute which read:

**Article 20(4)(e)**

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

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

**INTRODUCTION**

1. By its Decision of 2 October 2003 ("the Decision"), the Chamber granted a motion of the Defence for Mugiraneza<sup>1</sup>. The motion sought to require the Registrar to allow the Defence access to a Witness. The Trial Chamber granted the Defence Motion in the following terms:

- (a) The Parties shall arrange between themselves a suitable time for the Defence to interview Mr Kambanda, when a representative of the Prosecution may be present. There must be no unreasonable delay in the facilitation of this interview.
- (b) The Registry shall facilitate the interview according to its established procedures, and also according to the laws and procedures of the host country.

However:

- (c) Before the interview can take place, the Registrar should satisfy himself that Mr. Kambanda is indeed willing to be interviewed by the Defence. Should he not be

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<sup>1</sup> *The Prosecutor v. Prosper Mugiraneza, Case No. ICTR-99-50-I, Decision on Prosper Mugiraneza's Motion to Require the Registrar to Allow Access to a Witness*, 2 October 2003

satisfied on this point, the interview shall not proceed, and the Registrar shall inform the Parties and the Chamber accordingly.

## **SUBMISSIONS OF THE PARTIES**

### *Submission of the Defence*

2. The Defence submits that under the principle of equality of arms, the Decision that interviews of the witnesses in question should be in the presence of the opposing party should apply equally to interviews by the Prosecutor and the Defence.
3. The Defence recognises that the Trial Chamber's decision related only to interviews of a single witness, Jean Kambanda.
4. The Defence argues that if this principle applies to all potential witnesses, Mugiraneza requests that the rule apply equally to interviews by the Prosecutor and the Defence. If, however, this rule applies only to interviews of Kambanda or interviews of incarcerated witnesses, the Defence likewise asks the Trial Chamber to apply the same rule to all interviews.
5. The Defence submits that if the integrity of the proceedings before the Tribunal requires a representative of the Prosecutor when the Defence interviews Kambanda (or all incarcerated witnesses or all witnesses depending on the breadth of the holding), the integrity of the proceedings also require that Mugiraneza's representatives be present when the Prosecutor interviews Kambanda. The Defence moves the Trial Chamber to require the Prosecutor to comply with the same requirements set out in paragraph 28 of the Decision as the Defence.

### *Submission of the Prosecutor*

6. The Prosecutor submits that he has never requested interviews with Defence witnesses and that there is no need for the Defence to ask the Trial Chamber to lay out the modalities by which the Prosecutor may interview with Defence witnesses.
7. The Prosecutor further states that neither the Rules nor the jurisprudence of this Trial Chamber require the presence of the Defence at an interview by the Prosecutor of one of the Prosecutor's own witness.
8. The Prosecutor prays the Defence Request to be denied in its entirety.



**DELIBERATIONS**

9. In paragraph 26 of its Decision, the Trial Chamber recalled another decision rendered in the case of *Prosecutor v. Joseph Nzirorera*<sup>2</sup> where a similar request was made by the Defence to interview potential prosecution witnesses who were also convicts of this Tribunal.

10. The Chamber particularly notes a passage in that Decision whereby it is stated that "any interview of that kind should take place in the presence of a representative of the opposing party to protect the integrity of the process. The Chamber approves of this reasoning, and also observes that such procedures are recommended in some national jurisdictions, where it is seen as proper to interview a witness in the presence of a party from the opposing side, in order to clearly avoid any allegations that may arise in relation to tampering with evidence. The Chamber feels that in this case such procedures are appropriate to protect the integrity of the proceedings, including the transparency of that integrity. Thus, a representative of the opposing side should be permitted to attend such interview."

11. The Trial Chamber stresses that its Decision was specific to that particular instance, namely the access by the Defence to interview Mr. Kambanda. The Trial Chamber therefore considers that the application of its Decision should be restricted to the access by the Defence to interview Mr. Kambanda.

12. Considering that, in the particular circumstances of the case, the Prosecutor nominated Mr. Kambanda as a potential Prosecution Witness the Trial Chamber stresses again that the Decision was rendered on a specific relief sought by the Defence, namely access to Mr. Kambanda for an interview and therefore does not apply to all detained witnesses as alleged by the Defence.

13. The Trial Chamber recalls that the Decision issued only applies to interviews with the opposing party's witnesses (namely Mr. Kamdanda). Thus, the Decision does not set a general rule that an opposing party may be present during an interview with a witness conducted by the party who intends to call that witness. Therefore, the Trial Chamber does not consider that the integrity of the proceedings also requires that Mugiraneza's representatives be present when the Prosecutor interviews Mr. Kambanda.

14. Finally the Trial Chamber considers that its Decision was clear and unambiguous and that there was no necessity for the Defence to file its Motion. Therefore the Defence Motion is to be considered frivolous.

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<sup>2</sup> *Prosecutor v. Joseph Nzirorera*, Case No. ICTR-98-44-I, Decision on the Defence Request for Leave to Interview Potential Prosecution Witnesses Jean Kambanda, Georges Ruggiu and Omar Serushago (TC), 29 September 2003, para.5

**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

**DISMISSES** the Defence Motion in all respects;

**DIRECTS** the Registrar, pursuant to Rule 73(E), not to pay the Defence any fees or costs in regard to this motion.

Arusha, 23 October 2003



William H. Sekule  
Presiding Judge



Asoka de Zoysa Gûnawardana

Judge



Arlette Ramaroson  
Judge