

ICTR-99-50-I  
31-10-2003  
(W398 - W396)

W398  
Mugump



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Or: ENG

**TRIAL CHAMBER II**

**Before:** Judge Asoka de Zoysa Gunawardana, Presiding  
Judge Khalida Rachid Khan  
Judge Lee Gacuiga Muthoga

**Registrar:** Adama Dieng

**Date:** 31 October 2003

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JUDICIAL RECORDS SERVICES  
ICTR

**The PROSECUTOR**  
v.  
**Casimir BIZIMUNGU**  
**Justin MUGENZI**  
**Jerôme BICAMUMPAKA**  
**Prosper MUGIRANEZA**  
*Case No. ICTR-99-50-I*

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO STRIKE NON  
PROTECTED WITNESSES FROM THE PROSECUTOR'S WITNESS LIST**

**Counsels for the Prosecution:**

Paul Ng'arua  
Ibukunolu Babajide  
Elvis Bazawule  
George Mugwanya

**Counsel for the Defence:**

Michelyne C. St. Laurent for Casimir Bizimungu  
Howard Morrison and Ben Gumpert for Justin Mugenzi  
Pierre Gaudreau for Jérôme Bicamumpaka  
Tom Moran and Christian Gauthier for Prosper Mugiraneza

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

**SITTING** as Trial Chamber II, composed of Judge Asoka de Zoysa Gunawardana, Presiding, Judge Khalida Rachid Khan and Judge Lee Gacuiga Muthoga (the “Chamber”);

**BEING SEIZED** of “Prosper Mugiraneza’s Motion to Strike Non-Protected Witnesses from the Prosecutor’s Witness List” filed on 21 October 2003, (the “Motion”);

**NOTING** the “Prosecutor’s Conjoined Response to Prosper Mugiraneza’s Motion of 16 and 21 October 2003 Respectively to Prohibit the Calling of Any Prosecution Witness Until the Prosecutor Complies with the Trial Chamber’s Disclosure Order and Striking out of Non-Protected Witnesses from the Prosecutor’s Witness List” filed on 28 October 2003”, (the “Response”);

**NOTING** the Trial Chamber’s “Decision on Prosecutor’s Motion for Protective Measures for Prosecutor’s Witnesses” dated 12 July 2000, (the “Decision”);

**NOTING** the Trial Chamber’s Oral Order dated 7 October 2003, (the “Order”);

**ARGUMENTS OF THE DEFENCE**

1. The Defence argues that the Prosecutor has not complied with Rule 66(A)(ii) which requests the Prosecutor to disclose to the Defence at least 60 days before trial the statements of all witnesses it intends to call. According to the Defence, the only exceptions to the 60 days disclosure rule are in relation to expert witnesses and protected witnesses.
2. The Defence for Prosper Mugiraneza asserts that it has not received the Prosecutor’s witness list or the unredacted statements of non-protected witnesses.
3. Therefore the Defence prays that the Trial Chamber grant the following relief:
  - a. Strike from the Prosecutor’s Witness list all witnesses who are not expert witnesses or protected witnesses and whose statements were not disclosed pursuant to Rule 66(A)(ii);
  - b. Grant him the relief prayed for in his motion of 16 October 2003, that is, to prohibit the Prosecutor from calling any protected witnesses who were not on a witness list served on his counsel at least 21 days before the witness is called to testify and whose identifying information as defined;
  - c. Such other relief in the form of sanctions as the Trial Chamber deems appropriate.

**ARGUMENTS OF THE PROSECUTOR**

4. In relation to this Motion, the Prosecutor responded that “the witnesses the Defence wishes to forbid to testify are technical witnesses and do not fall in the category and do not fall in the category of witnesses anticipated in Rule 66(A)(ii). Furthermore, One of the three witnesses has no statement being a staff member of the Prosecutor’s office and the technical statements of the other were disclosed promptly after they came into the possession of the prosecuting counsel”.
5. Therefore, the Prosecutor urges the Trial Chamber to dismiss the Defence Motion in its entirety.

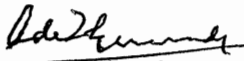
**DELIBERATIONS**


6. As a preliminary observation, the Trial Chamber states that the parties must be more specific and precise in their pleadings. The Defence has not given identifying information about concerned witnesses in its Motion.
7. The Prosecutor has pointed out that the witnesses whose statements were not furnished to the Defence have not made any statements, being staff members of the Office of the Prosecutor. Furthermore the Prosecutor has undertaken to furnish the statements of the technical witnesses as soon as the Prosecutor came into possession of such statements.
8. In the circumstances of this case, the trial Chamber does not see any merit in this motion.

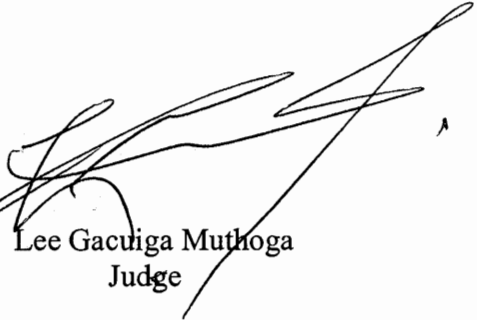
**FOR THE ABOVE REASONS, THE TRIBUNAL**

**DENIES** the Defence Motion in all respects.

Arusha, 31 October 2003

  
Asoka de Zoysa Gunawardana  
Presiding Judge

  
Khalida Rachid Khan  
Judge

  
Lee Gacuiiga Muthoga  
Judge

