

ICTR-99-50-I  
31-10-2003  
(10403-10398)

10403  
Mugiraneza



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

**The PROSECUTOR**  
v.  
**Casimir BIZIMUNGU**  
**Justin MUGENZI**  
**Jerôme BICAMUMPAKA**  
**Prosper MUGIRANEZA**  
*Case No. ICTR-99-50-1*

2003 OCT 31 P 2:10  
JUDICIAL RECORDS SECTION  
ICTR

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO PROHIBIT THE  
CALLING OF ANY PROSECUTION WITNESS UNTIL THE PROSECUTOR  
COMPLIES WITH THE TRIAL CHAMBER'S DISCLOSURE ORDER**

**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 Prohibit the Calling of Any Prosecution Witness until the Prosecutor Complies with the Trial Chamber's Disclosure Order" filed on 16 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");

**NOTING** the Trial Chamber's "Clarification Order in Respect of Disclosure of Identifying Information of Protected Witnesses" dated 15 October 2003, (the "Clarification Order");

#### **ARGUMENTS OF THE DEFENCE**

1. The Defence argues that the Prosecutor has refused to comply with the Trial Chamber's Order and Decision regarding disclosure of unredacted witness statements as well as identifying information regarding Prosecutor's Witnesses;
2. The Defence for Prosper Mugiraneza asserts that it has received the unredacted statements on 16 October 2003 and that it has not been provided with any identifying information as ordered by the trial Chamber;
3. The Defence recalls the Decision dated 12 July 2000 according to which the Prosecutor has the obligation to disclose the unredacted statements as well as the identifying information of any witness he intends to call twenty-one days (21) days before the witness is due to testify;
4. Therefore the Defence prays the Trial Chamber:
  - a. That the Prosecutor be forbidden to call any witness who is not properly identified pursuant to the Trial Chamber's Decision of 12 July 2000;
  - b. That the Prosecutor be forbidden to call any witness not on a witness list that was timely served on Mugiraneza's Counsel;

- c. That the trial Chamber adjourn the Trial in the instant case until such time as the prosecutor complies with its ruling related to the identification of witnesses and witness lists;
- d. That the Trial Chamber take such action as it deems appropriate in the form of sanctions to prevent future violations of its orders.

#### ARGUMENTS OF THE PROSECUTION

5. The Prosecutor considers that the Defence Motion is rendered moot by its compliance with the Trial Chamber's Order.
6. According to the Prosecutor, the documents served to the counsel for Prosper Mugiraneza were provided, "voluntarily caution as a gesture of goodwill and early notification". The said documents were filed on 8 October 2003 in accordance with the Trial Chamber's Order.
7. Therefore, the Prosecutor urges the Trial Chamber to deny the Motion in its entirety.

#### DELIBERATIONS

8. Notwithstanding the particular circumstances in the present case, the Trial Chamber directs that all its orders and/or decisions are compulsory and should be complied with by the parties.
9. In this regard the Trial Chamber would draw the attention of the parties to the provisions of Rule 46 of the Rules of Procedure and Evidence (the "Rules") which provides in its relevant parts:

##### Rule 46: Misconduct of Counsel

(A) A Chamber may, after a warning, impose sanctions against a counsel if, in its opinion, his conduct remains offensive or abusive, obstructs the proceedings, or is otherwise contrary to the interests of justice. This provision is applicable *mutatis mutandis* to Counsel for the prosecution.

(B) A Judge or a Chamber may also, with the approval of the President, communicate any misconduct of counsel to the professional body regulating the conduct of counsel in his State of admission or, if a professor and not otherwise admitted to the profession, to the governing body of his University.

[...]




10. The Trial Chamber notes that, according to its Order, the Prosecutor has filed the unredacted witness statement on 8 October 2003, that is to say more than twenty-one days before the testimony of the witnesses at trial. The Trial Chamber notes further that the Prosecutor has decided on its own to file the unredacted statements of eighty (80) potential prosecution witnesses. Therefore, the Trial Chamber is satisfied that the Prosecutor has complied with its obligation of disclosure regarding the unredacted witness statements.
11. Regarding the identifying information, the Trial Chamber made an Order of 7 October requesting the Prosecutor to furnish the identifying information related witnesses on 8 October 2003. The Trial Chamber takes note that the Prosecutor filed a Motion for Clarification of the Order on 8 October 2003 and that the Trial Chamber issued its Order on this matter on 15 October. Furthermore the Chamber observes that the Prosecutor has filed the identifying information on 21 October 2003, that is seven (7) days after the Clarification Order and fourteen (14) days before the beginning of this trial session.
12. Although it may be argued that the Prosecutor has not proceeded diligently in the above-mentioned matter, nevertheless the Defence has failed to show how a delay of seven days in the disclosure of the identifying information has materially prejudiced the preparation of the case for the Defence considering that the Defence was in possession of the names and unredacted witness statements of all the witnesses the Prosecutor intended to call since 8 October 2003.
13. Although the Defence has requested sanctions against the Prosecutor, the Trial Chamber does not find, in the circumstances of this case, sufficient grounds to sanction the Prosecutor.

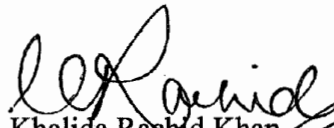
**FOR THE ABOVE REASONS, THE TRIBUNAL**


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

**REMINDS** both parties of their respective obligations to strictly comply with all decisions, orders and schedules throughout the proceedings.

Arusha, 31 October 2003

  
Asoka de Zoysa Gunawardana  
Presiding Judge

  
Khalida Raehid Khan  
Judge

  
Lee Gacuga Muthoga  
Judge

