



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
8/12/2003
(11150-11147)

1150
Adama

Or: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 8 December 2003

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ICTR
UNION PROSECUTOR GENERAL

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

**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR EXCULPATORY
EVIDENCE PURSUANT TO RULE 68 AND TO VARY PROTECTIVE
MEASURES**

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 and Michel Croteau 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 for Exculpatory Evidence Pursuant to Rule 68 and to Vary Protective Measures” filed on 27 November 2003, (the “said Motion”);

NOTING the Prosecutor’s letter “Re: Request for Exculpatory Evidence and for Variation of Protective Order” filed on 1 December 2003, (the “Response”);

TAKING INTO CONSIDERATION the “Decision on Prosecutor’s Motion for Protective Measures for Witnesses” issued on 12 July 2000, (the “Protective Measures Decision”);

ARGUMENTS OF THE PARTIES

Defence Submissions

1. The Defence for Prosper Mugiraneza moves the Trial Chamber to instruct the Prosecutor to disclose allegedly exculpatory material, namely the unredacted statements and the unredacted cover sheets to the statements of Witnesses GJS and GNN as well as “any other information in the possession of the Office of the Prosecutor related to those witnesses which is exculpatory within the broad meaning of Rule 68”.
2. According to the Defence, the statements of these two witnesses contradict the statements of Prosecution Witnesses GTE and GKS.
3. The Defence also moves the Trial Chamber “to vary the protective order issued on 12 July 2000 to the extent that he and/or his agents, investigators and counsel may contact and interview those witnesses”. According to the Defence, since Witnesses GJS and GNN are not on the Prosecutor’s witness list, the Prosecutor should have no objection to their interview by the Defence.

Prosecution Submissions

4. The Prosecutor, in a letter filed with the Registry on 1 December 2003, acknowledged the request made by the Defence and disclosed unredacted statements of Witnesses GJS and GNN. Regarding the cover sheets of the said witnesses, the Prosecutor provided the Defence with a redacted version of the cover sheets, in accordance with the Court Order dated 15 October 2003.
5. Regarding the request of the Defence for information on witness current location for interview, the Prosecutor argues that the witnesses are covered by the Protective

Order of 12 July 2000. According to the Prosecutor, the “fact that the witnesses are not listed in the present Prosecutor’s list of witnesses does not mean that they have been totally removed from the Prosecutor’s list of witnesses”.

DELIBERATIONS

Disclosure of unredacted statements and cover sheets of Witnesses GJS and GNN

6. Considering that the requested unredacted statements of Witnesses GJS and GNN have been disclosed by the Prosecutor to the Defence, the Trial Chamber is of the opinion that this part of the said Motion is now rendered moot and should be dismissed.

7. Regarding the cover sheets, the Trial Chamber considers that the Prosecutor has complied with the “Clarification Order in Respect of Disclosure of Identifying Information of Protected Witnesses”¹ of 15 October 2003. He has disclosed all the identifying information related to Witnesses GJS and GNN. Therefore, the Trial Chamber is of the opinion that this part of the said Motion is also now rendered moot and should be dismissed.

Scope of Rule 68 of the Rules

8. Rule 68 of the Rules reads as follows:

The Prosecutor shall, as practicable, disclose to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

9. According to the Defence, the statements of two Prosecution witnesses, namely Witnesses GTE and GKS, are contradicted by the statements of GNN and GJS. Without making an assessment of the credibility or the nature of the evidence given by the witnesses, the Trial Chamber is of the opinion that the information provided by the Defence in the said Motion can be considered as coming within the scope of Rule 68.

Defence’ Request for Interview of Witnesses GJS and GNN

10. The Trial Chamber recalls the provisions of paragraph 3.i) of the Protective Measures Decision:

“[...] the accused or his Defence Counsel shall make a written request, on reasonable notice to the Prosecution, to the Chamber or a judge thereof, to contact any protected victim or potential Prosecution witnesses or any relative of such person; and [requiring] that when such interview has been granted by the Chamber or a Judge thereof, with the consent of such protected person or the parents or guardian of

¹ The Prosecutor v. Casimir Bizimungu et al., Case No ICTR-99-50-I, “Clarification Order in Respect of Disclosure of Identifying Information of Protected Witnesses”, 15 October 2003.

that person if that person is under the age of 18, that the Prosecution shall undertake all necessary arrangements to facilitate such interview.”

11. The Trial Chamber is satisfied that Witnesses GJS and GNN are potential Prosecution witnesses and that the Protective Measures Decision applies to them. The Trial Chamber is also satisfied that the Defence has made a written request on reasonable notice to the Prosecutor and the Trial to contact and interview Witnesses GJS and GNN. The Trial Chamber considers that, since the Defence has shown good cause that the said witnesses may be in possession of exculpatory evidence pursuant to Rule 68, the Defence should be granted access to the witnesses and be given the opportunity to interview Witnesses GJS and GNN. The Trial Chamber, however, considers that such interviews should take place in accordance with all relevant provisions of the Protective Measures Decision.

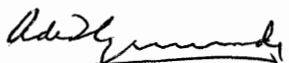
FOR THE ABOVE REASONS, THE TRIBUNAL


GRANTS the said Motion in the following terms:

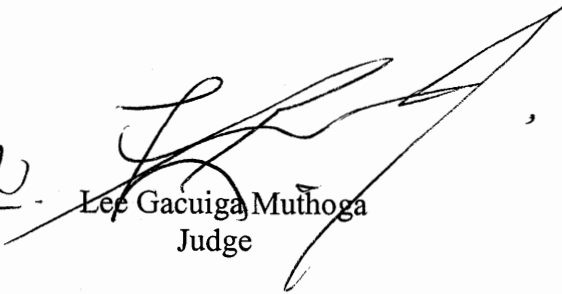
- (a) The Prosecutor shall disclose the relevant information for the location of Witnesses GJS and GNN. The Defence is reminded of the provisions of the Protective Measures Decision, particularly paragraphs 3.e), 3.f) and 3.g).
- (b) The parties shall arrange between themselves for the Defence to interview Witnesses GJS and GNN in the presence of a representative of the Office of the Prosecutor.
- (c) The Registry shall facilitate the interview according to its established procedures, and also according to the laws and procedures of the countries of residence of the witnesses.
- (d) **However**, before the interview can take place, the Registrar should satisfy himself that Witnesses GJS and GNN are indeed willing to be interviewed by the Defence. Should he not be satisfied on this point, the interview shall not proceed, and the Registrar shall inform the Parties and the Chamber accordingly.

DISMISSES the said Motion in all other respects.

Arusha, 8 December 2003


Asoka de Zoysa Gunawardana
Presiding Judge


Khalida Raehid Khan
Judge


Lee Gacuiga Muthoga
Judge

