

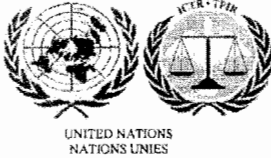
ICTR-99-50-T

29-01-2004

(12030 — 12025)

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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: 29 January 2004

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

2004 JAN 29 A 10:19

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO VARY
PROTECTIVE MEASURES AND TO ORDER THE PROSECUTOR TO
PROVIDE AN UNREDACTED COPY OF ADMITTEDLY EXCULPATORY
STATEMENT**

Counsels for the Prosecution:

Paul Ng'arua
Ibukunolu Babajide
Elvis Bazawule
George Mugwanya

Counsels for the Defence:

Michelyne C. St. Laurent and Alexandra Marcil 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 to Vary Protective Measures and to Order the Prosecutor to Provide an Unredacted Copy of Admittedly Exculpatory Statement” filed on 17 September 2003, (the “said Motion”);

NOTING the “Prosecutor’s Response to Prosper Mugiraneza’s Motion to Vary Protective Measures and to Order the Prosecutor to Provide an Unredacted Copy of Admittedly Exculpatory Statement” filed on 22 September 2003, (the “Response”);

NOTING the “Prosper Mugiraneza’s Reply to the Prosecutor’s Response to Prosper Mugiraneza’s Motion to Vary Protective Measures and to Order the Prosecutor to Provide an Unredacted Copy of Admittedly Exculpatory Statement” filed on 23 September 2003, (the “Reply”);

NOTING the Prosecutor submission titled “Pseudonym of Witness Referred to in Mugiraneza’s motion of 17 September 2003” filed on 22 January 2004, (the “Prosecutor’s Submission”);

NOTING the “Prosper Mugiraneza’s Request for Rulings on Pending Motions” filed on 27 November 2003, (the “Request”);

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 Motion

1. The Defence requests the Trial Chamber to order the Prosecutor to provide it with “an unredacted copy of a statement containing information which is, in the opinion of the Office of the Prosecutor, exculpatory”. The Defence asserts that they received a letter dated 1 July 2002 in which the Prosecutor informs the Defence that a paragraph of a statement, which was in the possession of the Prosecutor, contains exculpatory material. However, the Prosecutor only attaches the said paragraph without mentioning the pseudonym of the said witness and did not provide the Defence with a copy of the whole statement.
2. In support of its contention, the Defence attaches the letter sent by the Prosecutor to the Defence where he, according to the Defence, concedes that the said statement is exculpatory.

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3. Therefore the Defence moves the Trial Chamber to:
- a. order the Office of the Prosecutor to provide him with an unredacted copy of the statement referred to in the Prosecutor's letter.
 - b. order the Office of the Prosecutor to provide him with sufficient identifying information so that the Defence may locate and contact the witness.
 - c. authorize Mugiraneza's representatives to meet with and interview the witness under such conditions, as the witness desires.

Prosecutor's Response

4. The Prosecutor opposes the disclosure of the whole statement as well as the identity of the said witness as, according to the Prosecutor, it would constitute a violation of the Protective Measures Decision of 12 July 2000.

5. According to the Prosecutor, the Defence is not entitled to the disclosure of the whole statement as it has already received the excerpt that contains exculpatory material. Therefore, the Prosecutor, in disclosing the excerpt, has fully complied with Rule 68 of the Rules of Procedure and Evidence (the "Rules").

6. Finally the Prosecutor argues that, "the practice and the Rules of the Tribunal does not provide for the interviewing of witnesses prior to testimony at trial".

7. Therefore the Prosecutor prays the Trial Chamber to hold that,
- a. the Defence has failed to demonstrate its entitlement to the variation of the Protective Measures Decision;
 - b. the Defence has no right in law or pursuant to the Rules, to interview a Prosecution's witness before trial;
 - c. the said Motion should be dismissed in its entirety.

Defence Reply

8. The Defence has replied that it is entitled to receive this allegedly exculpatory statement under Rule 68. According to the Defence, the Prosecutor does not intend to call this witness as a Prosecution witness and therefore this witness should not be covered by the Protective Measures Decision of 12 July 2000. Furthermore, the Defence for Prosper Mugiraneza pointed out that it needs all the information related to this witness in order to investigate "potentially exculpatory evidence so that he can present it to the Trial Chamber as part of the truth finding process".



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DELIBERATIONS

Identity of the Witness mentioned in the said Motion

9. In his submission, the Prosecutor has brought to the Trial Chamber's attention that, the pseudonym of the witness referred to in the said Motion was Witness GTF and that the later appeared as Number 68 on the Prosecutor's witness list filed on 21 October. The Trial Chamber is satisfied that Witness GTF is a Prosecution witness and that the Protective Measures Decision applies to this witness.

Scope of Rule 68 of the Rules

10. 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.

11. According to the Defence, the statement of Witness GTF contains exculpatory material. Without making an assessment of the credibility, the relevancy or the nature of the evidence given by the witness, the Trial Chamber is of the opinion that the information provided by the Defence in the said Motion can be considered as sufficient to come within the scope of Rule 68.

Disclosure of unredacted statement and identifying information of Witness GTF

12. Considering that the requested unredacted statement of Witness GTF has been disclosed by the Prosecutor to the Defence, on 8 October 2003, the Trial Chamber is of the opinion that this part of the said Motion is now rendered moot and should be dismissed.

13. Regarding the identifying information contained in the cover sheets attached to Witness GTF's statement, 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 Witness GTF on 21 October 2003. Therefore, the Trial Chamber is

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.*

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of the opinion that this part of the said Motion is also now rendered moot and should be dismissed.

Defence' Request for Interview of Witness GTF

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

15. The Trial Chamber is satisfied that Witness GTF is a Prosecution witness and that the Protective Measures Decision applies to this witness. The Trial Chamber is also satisfied that the Defence has made a written request on reasonable notice to the Prosecutor and the Trial Chamber to contact and interview Witness GTF. The Trial Chamber considers that, since the Defence has shown good cause that the said witness may be in possession of exculpatory evidence pursuant to Rule 68, the Defence should be granted access to the witness and be given the opportunity to interview Witness GTF. The Trial Chamber, however, considers that such interview should take place in accordance with all relevant provisions of the Protective Measures Decision and after the consent of the witness is obtained in terms of paragraph 3.1) 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 Witness GTF. The Defence is required to follow 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 Witness GTF, in the presence of a representative of the Office of the Prosecutor.

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- (c) The Registry shall facilitate the interview according to its established procedures, and also according to the laws and procedures of the country of residence of the witness.
- (d) **However**, before the interview can take place, the Registrar should satisfy himself that Witness GTF is indeed willing to be interviewed by the Defence. Should he be not satisfied on this point, the interview shall not proceed, and the Registrar shall inform the Parties and the Chamber accordingly.

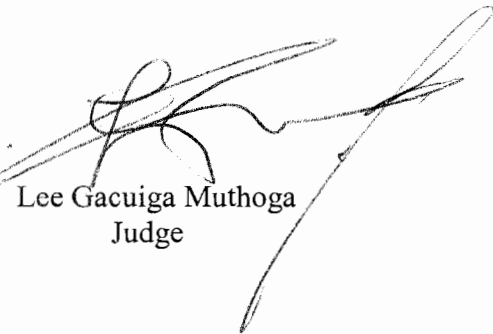
Arusha, 29 January 2004



Asoka de Zoysa Gunawardana
Presiding Judge



Khalida Rachid Khan
Judge



Lee Gacuiga Muthoga
Judge

(Seal of the Tribunal)