

ICTR-99-50-T
06-02-2004
(12088 - 12085)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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Or: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 5 February 2004

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

2004 FEB 6 A 10:30
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**DECISION ON PROSPER MUGIRANEZA'S MOTION TO EXCLUDE
TESTIMONY OF WITNESSES WHOSE TESTIMONY IS INADMISSIBLE IN
VIEW OF THE TRIAL CHAMBER'S DECISION OF 23 JANUARY 2004 AND
FOR OTHER APPROPRIATE RELIEF**

Office of the Prosecutor:

Paul Ng'arua
Ibukunolu Babajide
Elvis Bazawule
George Mugwanya

Counsel 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 “Trial Chamber”);

BEING SEIZED of “Prosper Mugiraneza’s Motion to Exclude Testimony of Witnesses Whose Testimony is Inadmissible in View of the Trial Chamber’s Decision of 23 January 2004 and for Other Appropriate Relief” filed on 29 January 2004, (the “said Motion”);

NOTING the “Prosecutor’s Response to a Motion from Prosper Mugiraneza to Exclude Testimony of Witnesses GJV, GJQ, GJY, GKP, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW, GJZ and LY” filed on 3 February 2004, (the “Response”);

TAKING INTO CONSIDERATION the submissions made by both parties when this matter was taken up in open court on 5 February 2004;

NOTING the “Decision on Motion from Casimir Bizimungu Opposing to the Admissibility of the Testimony of Witnesses GKB, GAP, GKC, GKD and GFA”, filed on 23 January 2004, (the “Decision of 23 January 2004”) **AND** the “Decision on Motion from Casimir Bizimungu Opposing to the Testimony of Witnesses AEI, GKE, GKF and GKI” filed on 3 February 2004, (the “Decision of 3 February 2004”);

SUBMISSIONS OF THE PARTIES

1. The Defence for Prosper Mugiraneza moves the Trial Chamber to grant similar relief to that which was granted by the Trial Chamber in its Decision of 23 January 2004 and to exclude the evidence of those witnesses whose testimony does not relate to material facts pleaded in the Indictment, which was confirmed on 12 May 1999.

2. According to the Defence, the written statements of Prosecution Witnesses GJV, GJQ, GJY, GKP, GKS, GKM, GTF,¹ GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW and GJZ contain evidence of several criminal acts implicating Prosper Mugiraneza in Kibungu *préfecture*. The Defence submits that the Indictment does not refer to any material fact involving Prosper Mugiraneza in the events that took place in Kibungo *préfecture*. As for Witness LY, the Defence argues that his written statements mention events allegedly implicating Prosper Mugiraneza in Cyangugu *préfecture*, which are not pleaded in the Indictment. Therefore, the Defence submits that the evidence relating to events involving Prosper Mugiraneza in Kibungo and Cyangugu *préfectures* should not be considered by the Trial Chamber.

¹ The Trial Chamber considers that, even if the pseudonym GTF was given to two witnesses on the Prosecutor’s Witness list filed on 21 October 2003, for the purpose of this decision, GTF will be assigned to the witness that appears under No. 7 on the Prosecutor’s Witness list dated 21 October 2003.

3. Furthermore, the Defence moves the Trial Chamber to disregard the evidence given by Witness GTE² in relation to events implicating Prosper Mugiraneza in Kibungu *préfecture* and not alleged in the Indictment. The Defence concedes that Counsel for Prosper Mugiraneza should have opposed the admission of the testimony of Witness GTE at the time she gave evidence in Court. However, the Defence requests the Trial Chamber to exercise its discretion pursuant to Rule 5(B) of the Rules of Procedure and Evidence to exclude the impugned evidence given by Witness GTE, in the interests of justice. In addition, the Defence submits that Witness GTE refused to answer some of the questions put to her in cross-examination by Counsel for Prosper Mugiraneza. In the circumstances, according to the Defence, the right of the Accused to a fair trial has been denied.

4. The Prosecutor submits that the evidence sought to be excluded falls “squarely within the ambit of the Indictment as the Indictment charges the Accused with different modes of participation in the commission of genocide and other transgressions of international humanitarian law throughout Rwanda, not excluding any *préfecture*”. According to the Prosecutor, “the participation involved, *inter alia*, participation in a joint criminal enterprise for the elimination of Tutsis throughout Rwanda. The criminal enterprise was executed by different members of the Interim Government throughout the 11 *préfectures* of Rwanda not excluding Kibungo”.

5. In the oral submissions in Court on 5 February 2004, the Prosecutor added that, although no specific place is mentioned in the Indictment, the evidence that these witnesses would give can be admitted to prove the charges of Conspiracy and Complicity in Genocide, as this evidence goes to prove the acts constituting the said offences, committed throughout Rwanda.

DELIBERATIONS

6. The Trial Chamber recalls its reasoning set out in the Decisions of 23 January 2004 and 3 February 2004. The Trial Chamber observes that there are no specific acts alleged against Prosper Mugiraneza in relation to events that took place in Kibungo and Cyangugu *préfectures* in any part of the Indictment. When questioned in open court by the Trial Chamber, the Prosecutor was unable to show the specific acts pleaded in the Indictment in respect of Prosper Mugiraneza in Kibungo and Cyangugu *préfectures*.

7. The Trial Chamber considers that it is a requirement of the law that, in addition to the charges against the Accused, an Indictment should contain a statement of the material facts which the Prosecutor intends to rely on in support of the charges. This must be given in sufficient detail so as to enable the Accused to prepare his defence. This forms the essence of a fair trial as guaranteed by the provisions of Article 20 of the Statute.

8. The Trial Chamber observes that the Prosecutor has failed to mention as material facts in the Indictment the involvement of Prosper Mugiraneza in the events that took place in Kibungo and Cyangugu *préfectures*. Hence, the evidence sought to be adduced from Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO,

² Witness GTE testified on 1 and 2 December 2003.

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GKT, GJX, GJW, GJZ and LY will not be relevant or admissible against Prosper Mugiraneza, in so far as it implicates him in Kibungo and Cyangugu *préfectures*. Therefore, the Trial Chamber is of the view that the Prosecutor shall not be permitted to lead any evidence, relating to events implicating Prosper Mugiraneza in Kibungo and Cyangugu *préfectures* from Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW, GJZ and LY.

9. However, the Trial Chamber notes that the Indictment charges the Accused with Conspiracy to Commit Genocide as alleged in Count 1 of the Indictment and Complicity in Genocide as alleged in Count 3 of the Indictment. The Trial Chamber considers that in certain paragraphs of the Indictment, for example paragraphs 6.14, 6.23, 6.25, 6.31 and 6.68, adequately set out the material facts in relation to the commission of those offences. Therefore, the Trial Chamber is of the view that evidence from Witnesses GJV, GJQ, GJY, GKS, GKM, GTF, GKR, GJT, GJR, GJU, GJN, GJO, GKT, GJX, GJW, GJZ can be adduced in support of those charges.

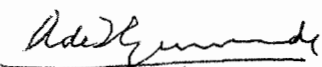
10. Finally, the Trial Chamber notes that Witness GTE and Witness GKP have already testified before this Chamber on 1 and 2 December 2003 and on 5 and 8 December 2003 respectively. The Trial Chamber is of the view that the appropriate time to raise an objection seeking to exclude the evidence of the said witnesses was before the commencement of the evidence of the disputed witnesses or at least during the testimony of these witnesses. Furthermore, the Defence for Prosper Mugiraneza did not take the objection at the appropriate time, and since it had the opportunity to cross-examine the said witnesses, the Trial Chamber considers that no prejudice has been caused to the Accused. Therefore the Trial Chamber does not find any reason to exclude the evidence of these two witnesses in respect of events implicating Prosper Mugiraneza in Kibungo *préfecture*.


FOR THE ABOVE REASONS, THE TRIAL CHAMBER

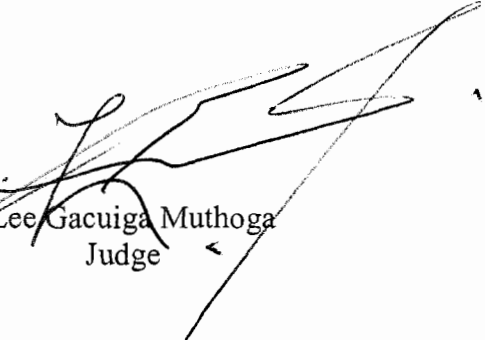
GRANTS the said Motion in terms set out in the above paragraphs 8 and 9.

DENIES the said Motion in all other respects.

Arusha, 5 February 2004


Asoka de Zoysa Gunawardana
Presiding Judge


Khalida Rachid Khan
Judge


Lee Gacuiga Muthoga
Judge

