



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER II

Before:

Khalida Rachid Khan, Presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar:

Mr. Carlos Javier Ortega
Mr. John Tumati

Date: 24 March 2004

The PROSECUTOR

v.

Casimir BIZIMUNGU
Justin MUGENZI
Jerome BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

*ORAL DECISION ON QUALIFICATION OF PROSECUTION EXPERT JEAN
RUBADUKA*

Office of the Prosecutor:

Mr. Paul Ng'arua, Mr. Justus Bwonwonga, Mr. Elvis Bazawule, Mr. Shyamlal Rajapaksa

Counsel for the Defence

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for **Casimir Bizimungu**
Mr. Howard Morrison and Mr. Ben Gumpert for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr. Michel Croteau for **Jerôme Bicamumpaka**
Mr. Tom Moran and Mr. Christian Gauthier for **Prosper Mugiraneza**

Extract: 24 March 2004 Transcript, Page 15, Line 1.

MADAM PRESIDENT:

The hearing is resumed. Excuse us for being a little late. In fact, we need a little bit more time to deliberate on this issue, and our oral ruling goes as follows:

The question before the Chamber at the present is whether or not Mr. Jean Rubaduka, who has been offered by the Prosecutor as an expert witness on Rwandan constitutional law is qualified to testify as an expert on the subject. The present *voir dire* proceedings have arisen from the fact that all the Defence teams have filed their notices of challenge, pursuant to Rule 94*bis* (B). In light of these notices of challenge, the Chamber took the view that the Prosecutor must first satisfy the Chamber that Mr. Rubaduka is an expert in the area for which he is being called to testify.

Accordingly, the Prosecutor led the witness in-chief on his qualifications and expertise, following which each of the Defence teams cross-examined the witness. And after the Prosecutor has re-examined him, made submissions on the issue, pursuant to Rule 89(C), the Chamber may admit any relevant evidence that is deemed to have probative value.

In seeking to admit the opinion testimony of any witness, the Prosecutor based the burden of demonstrating the witness is an expert, whose testimony is both relevant and of probative value to the Court.

Having heard the testimony and submissions on the question of qualification, the Chamber retired to deliberate and decided on the said preliminary issue. An examination of his curriculum vitae and his testimony in Court, shows clearly that his main claim to be a constitutional law expert rests primarily on his membership of the constitutional court and *conseil d'état*.

In response to a query from the Bench, the witness himself admitted that membership of these special bodies is insufficient to establish expertise in constitutional law. The witness was also asked how many laws or decrees came before him, and he was unable to indicate the number of occasions on which he was called upon to determine the constitutionality of laws and decrees, except to say that he remembers about five such rulings from 1979 to 1998.

The Chamber also notes that apart from having studied constitutional law as part of his law degree, the witness does not possess any additional academic qualifications to show a specialised expertise in the area. Although the witness has taught constitutional law at the National University of Rwanda as a visiting lecturer, the Chamber notes that the witness has not written or published in any recognised legal reviews and journals on the same, nor has his advice being sought by the state or any other organisation or individual on matters pertaining to constitute - Rwandan constitution.

The Chamber further notes that of the witness's many consultancies, none involved a constitutional law topic in narrow - in the narrow sense of the subject on which the witness proposes to testify as an expert.

Following the deliberations, the Chamber makes an oral ruling that it is not satisfied that Mr. Jean Rubaduka possesses sufficient knowledge and expertise on the Rwandan constitutional law to enable him to testify as an expert witness in that area.

Accordingly, the Chamber finds that Mr. Jean Rubaduka is not qualified to testify as an expert - expert witness. Thank you.