

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-I
05-05-04
(13424 - 13421)

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Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan

Registrar: Mr. Adama Dieng

Date: 5 May 2004

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jerome BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-I

JUDICIAL RECORDS
RECORDED
2004 MAY -5 P 5:00

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO REQUIRE STRICT
COMPLIANCE WITH RULE 66 (A) (ii)**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. George William Mugwanya
Mr. Shyamlal Rajapaksa
Mr. William Mubiru
Mr. Olivier De Schutter

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 Jérôme Bicamumpaka
Mr. Tom Moran and Mr. Christian Gauthier for Prosper Mugiraneza

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, assigned to decide this Motion pursuant to Rule 73(A) of the Rules of Procedure and Evidence, (the "Chamber");

BEING SEIZED of "Prosper Mugiraneza's Motion to Require Strict Compliance with Rule 66(A)(ii)", filed on 25 February 2004 (the "Motion");

HAVING RECEIVED:

- i) The "Supplement to Prosper Mugiraneza's Motion to Require Strict Compliance with Rule 66(A)(ii)", filed on 4 March 2004;
- ii) The "Prosecutor's Response to Prosper Mugiraneza's Motion to Require Strict Compliance with Rule 66(A)(ii)", filed on 4 March 2004;
- iii) "Prosper Mugiraneza's Reply to the Prosecutor's Response to Prosper Mugiraneza's Motion to Require Strict Compliance with Rule 66(A)(ii)", filed on 9 March 2004;

ARGUMENTS OF THE PARTIES

Defence

1. The Defence seeks an Order from the Trial Chamber requiring the Prosecution to comply with Rule 66(A)(ii) of the Rules, prior to the appearance of the witnesses. The Defence asserts that Counsel for the Prosecution failed to determine the number of statements of Witness DY and to furnish them prior to the witness appearance in the case.
2. Furthermore, the Defence argues that the Prosecution refused to provide copies of the transcripts of the Witness DY's prior testimony in the *Bagosora* trial.

Prosecution

3. The Prosecution asserts that it had disclosed all the prior statements of Witness DY to the Defence. Accordingly, two statements were disclosed in July 2000, and then "re-disclosed" in October 2003 at the close of the proceedings. Subsequent statements were also disclosed to the Defence at a later stage.¹
4. The Prosecution submits that the Defence had misinterpreted its obligations under Rule 66, which in its view does not govern the disclosure of closed sessions materials or transcripts. The Prosecution maintains that, after obtaining open and closed session transcripts of Witness DY, it had disclosed them to the Defence. The Trial Chamber ordered however that the Defence should hand back the transcripts to the Prosecution.

¹ The order of disclosure according to the Prosecution does not appear clearly in its Response. See paras.5-7 of the Response.



5. The Prosecution argues that the Party wishing to use closed session testimony must apply to the relevant Chamber. Therefore, the Prosecution prays the Chamber not to allow the Defence Motion.

HAVING DELIBERATED,

6. The Chamber notes that pursuant to the provisions of Rule 66(A)(ii), the Prosecution is obliged to disclose to the Defence:

“(n)o later than 60 days before the date set for trial, copies of the statements of all witnesses whom the Prosecutor intends to call to testify at trial; upon good cause shown a Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the defence within a prescribed time”.

7. The Chamber recalls the *Blaskić* Decision, in which the International Criminal Tribunal for Former Yugoslavia (ICTY) Trial Chamber I observed that all previous statements of all Prosecution witnesses, in whatever form, must be disclosed to the Defence².

8. Further, the Chamber recalls that in the *Kupreskic* case, Trial Chamber I of the ICTY held that “the transcript of the testimony of a witness constitutes a statement within the meaning of Sub-Rule 66(A)(ii) of the Rules; that is therefore appropriate to permit its disclosure to Defence Counsel”³. Nevertheless, the Chamber stresses that it is only when the Witness is to testify on the same subject matter as his previous testimony that this previous testimony shall constitute a witness statement within the meaning of Rule 66(A)(ii) and is therefore subject to disclosure.

9. Should prior sealed transcripts or exhibits of a witness to be called to testify at trial constitute statements within the meaning of Rule 66(A)(ii) of the Rules, the Prosecution is placed under an obligation to apply to the Trial Chamber that originally sealed the transcript or exhibits for permission to release the same to the Defence. That Trial Chamber will then decide whether to allow the application, and what, if any, conditions would attach to that permission. Should permission be granted, the Prosecution would then be under an obligation to disclose those transcripts or exhibits to the Defence, and the Defence would correspondingly be restricted in its use of those materials in accordance with the orders of the Chamber which allowed it access.

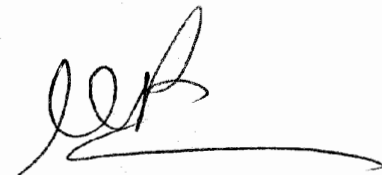
FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion in the following terms only:

REMINDS the Prosecution of its obligations to strictly comply with the provisions of Rule 66(A)(ii), and to ensure that the correct procedure for

² *The Prosecutor v. Tihomir Blaskić*, Case No.IT-95-14-PT, “Decision on the Production of Discovery Materials”, 27 January 1997, para. 38.

³ *The Prosecutor v. Zoran Kupreskic et al.*, Case No. IT-95-16-A, “Decision on the Prosecutor’s Request to Release Testimony Pursuant to Rule 66 of the Rules of Procedure and Evidence Given in Closed Session under Rule 79 of the Rules”, 29 July 1998, p.2.

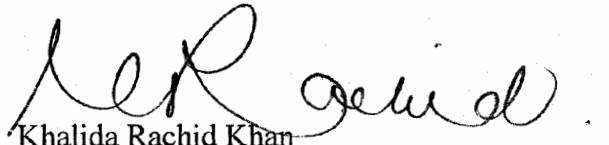


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disclosure of sealed prior statements or exhibits is followed in good time, as set out above.

DENIES the Motion in all other respects.

Arusha, 5 May 2004


Khalida Rachid Khan
Judge

(Seal of the Tribunal)