



TUR-99-50-T
12-05-2004
(13456 — 13454)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

13456 smk/2004

Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan

Registrar: Mr. Adama Dieng

Date: 12 May 2004

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

JUDICIAL RECORDS
ICTR
2004 MAY 2 7 10 15

**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR AN ORDER
REQUIRING PAUL NG'ARUA TO SHOW WHY HE SHOULD NOT BE HELD
IN CONTEMPT OF THE TRIBUNAL**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
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, Q.C. 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

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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 for an Order requiring Paul Ng’arua to show cause why he should not be held in contempt of the Tribunal for violation of the Trial Chamber’s Order for protection of Witnesses” filed on 13 April 2004, (the “Motion”);

NOTING the “Prosecutor’s Response to Prosper Mugiraneza’s Motion for an Order requiring Paul Ng’arua to show cause why he should not be held in contempt of the Tribunal for violation of the Trial Chamber’s Order for protection of Witnesses” filed on 19 April 2004, (the “Response”);

ARGUMENTS OF THE PARTIES

1. The Defence informs the Chamber that Paul Ng’arua, the lead Prosecutor acting for the Prosecution in this trial, signed and caused to be filed as a public document a pleading identifying the true names and pseudonyms of 16 protected witnesses.¹ These witnesses were protected witnesses pursuant to the Chamber’s Decision on the Prosecutor’s Motion for Protective Measures for Witnesses of 12 July 2000² (the “Protective Measures Decision”).
2. The Defence for Prosper Mugiraneza moves the Trial Chamber to issue an Order requiring Paul Ng’arua to show cause why he should not be held in contempt of the Tribunal for knowingly and deliberately violating the Protective Measures Decision. Alternatively, the Defence asks for the appointment of an *amicus curiae* to investigate the matter or to conduct an evidentiary hearing pursuant to Rule 77 of the Rules and at the conclusion of that hearing, to enter any orders or judgment pursuant to Rule 77(G) of the Rules as the Chamber deems appropriate.
3. The Prosecution accepts that the breach as described by the Defence in fact occurred; however denies that this breach was knowing and deliberate. The Prosecution represents that the filing of the document in question as a public document was an inadvertent mistake, which the Prosecution regrets. It points out that as soon as the mistake was realised, remedial steps were immediately taken to reclassify the document as confidential.³

¹ *Mugiraneza*, Prosecutor’s Appellate Brief, filed on 31 March 2004.

² *Mugiraneza*, Decision on the Prosecutor’s Motion for Protective Measures for Witnesses (TC), 12 July 2000

³ In evidence of this fact the Prosecution attaches two documents to the Response: (1) Interoffice Memorandum to the Court Management Section, dated 14 April 2004, requesting immediate reclassification of the document in question as confidential; (2) “Prosecutor’s Urgent Motion to Seal Annexure ‘A’ to the ‘Prosecutor’s Appeal Against the Trial Chamber II Decision of 5 February 2004



DELIBERATIONS

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4. The Chamber notes with regret the serious breach by the Prosecution of the Protective Measures Decision. The best protection available to witnesses before this Tribunal is anonymity, and when it is promised to witnesses but not adhered to by one of the Parties, the safety of witnesses and victims is put at risk.

5. The Chamber notes that on Motion of the Accused Prosper Mugiraneza, the Appeals Chamber on 16 April 2004 ordered the annex to the Motion disclosing the protected identities to be sealed, and also various other measures to protect the identities of the Prosecution witnesses.⁴


6. The Chamber accepts the representations by the Prosecution that the breach was accidental. However the Chamber finds that the error demonstrates a laxity of methodology within the Office of the Prosecutor, verging on negligence.

7. The Chamber does not find it appropriate to order that this matter be investigated further, nor to levy sanctions on the Office of the Prosecutor pursuant to Rule 77 as suggested by the Defence. The Prosecution is undoubtedly aware of the serious nature of its mistake and the Chamber trusts that measures will be put in place to ensure that it does not happen again.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DENIES the Motion in its entirety.

Arusha, 12 May 2004


Khalida Rachid Khan
Judge



Excluding the Testimony of Witness GJV and Sixteen Others”, filed before the Appeals Chamber 14 April 2004.

⁴ *Mugiraneza*, Decision on Motions to Seal Annexure “A” to the Prosecutor’s Appeal Brief (AC), 16 April 2004