



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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

**DECISION ON PROSPER MUGIRANEZA'S MOTION PURSUANT TO RULE
73(B) FOR CERTIFICATION TO APPEAL THE TRIAL CHAMBER'S ORAL
DECISION OF 20 FEBRUARY 2004**

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 Bicomumpaka
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 “Trial Chamber”);

BEING SEIZED of “Prosper Mugiraneza’s Motion Pursuant to Rule 73(B) for Certification to Appeal the Trial Chamber’s Oral Decision of 20 February 2004” filed on 20 February 2004, (the “said Motion”);

NOTING the “Prosecutor’s Response to Prosper Mugiraneza’s Motion Pursuant to Rule 73(B) for Certification to Appeal the Trial Chamber’s Oral Decision of 20 February 2004 filed on 19 March 2004, (the “Response”);

RECALLING the oral ruling by this Trial Chamber on 20 February 2004, (the “Oral Decision”);

ARGUMENTS OF THE PARTIES

1. The Defence for Prosper Mugiraneza moves the Trial Chamber to grant leave for appeal the Oral Decision of 20 February 2004. According to the Defence, the “appeal urged in this motion seeks a determination from the Appeals Chamber as to which party has the burden of removing legal impediments to disclosure of documents and other information pursuant to the Rules of Procedure and Evidence”. In this particular case, the Defence claims that the Prosecutor has the duty, pursuant to Rules 66(A) and 68 of the Rules, to disclose all previous statements of a Prosecution Witness, including the statements which are subject to a protection order.

2. In the instant case, the Defence argues that the closed session transcript of the testimony of Prosecution Witness DY should have been disclosed to the Defence prior to his testimony and that it was the Prosecutor’s duty to request to the Trial Chamber who granted the protective measures to the said witness, namely Trial Chamber I of the Tribunal, the authorization to disclose the said closed session transcripts.

3. The Prosecutor argues that it is the practice of the Tribunal that a party wishing to use materials in closed session to file a request before the Trial Chamber who granted the protective measures and before which the testimony in closed session was heard.

4. Further, according to the Prosecutor, the main issue raised by the said Motion on the basis for certification is legally flawed. The issue contains erroneous interpretation of the law relating to the Prosecutor’s disclosure obligation. The Prosecutor claims that his disclosure obligation is not absolute pursuant to Rules 66(C) and 70.

DELIBERATIONS

5. Rule 73(B) of the Rules reads as follows:

Decisions rendered on such motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

6. The Trial Chamber recalls the reasoning held by Trial Chamber II in a different composition in the case of *The Prosecutor v. Pauline Nyiramasuhuko et al.*:

It should be emphasized that the situations which may warrant interlocutory appeals under Rule 73(B) must be exceptional indeed. This point is made clear by the conditions which must be satisfied before the Trial Chamber may consider granting certification.

7. The Trial Chamber concurs with the Prosecutor's submission that Rule 73(B) deals with matters of an exceptional nature, and cannot be used for purposes of gaining access to the Appeals Chamber to resolve issues of a general nature namely, in this particular case, seizing the Appeals Chamber for an advisory opinion. The Trial Chamber is of the view that the Defence has failed to demonstrate that the said motion meets the requirements of Rule 73(B).

8. Finally, notwithstanding its above-mentioned reasoning pursuant to Rule 73(B), the Trial Chamber reminds the Defence that the issue at stake in the said Motion has already been decided by the Trial Chamber in its "Decision on Prosper Mugiraneza's Motion to Require Strict Compliance with Rule 66(A)(ii)" dated 5 May 2004.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DENIES the said Motion in its entirety.

Arusha, 12 May 2004

Khalida Rachid Khan
Judge

(Seal of the Tribunal)