

ICTR-99-50-T  
26-05-04  
(13580-13577)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

13580  
Amup

Or: ENG

**TRIAL CHAMBER II**

**Before:** Judge Khalida Rachid Khan, Presiding

**Registrar:** Mr. Adama Dieng

**Date:** 25 May 2004

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

2004 MAY 26 10:00 AM  
JUDICIAL RECORDS  
ICTR

**DECISION ON JÉRÔME BICAMUMPAKA'S MOTION TO INSPECT  
MATERIAL RELATING TO JEAN KAMBANDA**

**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 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

*jeff*

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the “Tribunal”),

**SITTING** as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, assigned to decide this Motion pursuant to Rule 73(A) of the Rules of Procedure and Evidence by the Trial Chamber also composed of Judge Lee Gacuiga Muthoga and Judge Emile Francis Short, (the “Trial Chamber”);

**BEING SEIZED** of “Jérôme Bicomumpaka’s Motion to Inspect Material Relating to Jean Kambanda” filed on 18 February 2004, (the “Motion”);

**NOTING** the “Prosecutor’s Response to Jérôme Bicomumpaka’s Motion to Inspect Material Relating to Jean Kambanda filed on 23 March 2004, (the “Response”);

**CONSIDERING** the Statute of the Tribunal and the Rules of Procedure and Evidence (the “Rules”) particularly Rule 66(A)(ii) of the Rules which reads:

“The Prosecutor shall disclose to the Defence:

- ii) No 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.

## **SUBMISSIONS OF THE PARTIES**

### *Defence Motion*

1. The Defence acknowledges that Jean Kambanda appears in the Prosecutor’s Witness list and that the agenda of Jean Kambanda has been disclosed to the Defence.
2. The Defence asserts, however, that the Prosecutor is withholding important material relating to Jean Kambanda. The Defence states that it is entitled to such material under Rule 66(A)(ii) of the Rules. The Defence argues it should have access to this material in order to establish whether any of the content may be used to exculpate the Defendant in the present case.
3. The Defence lists the documents and material believed to be withheld and requests the Chamber to order the Prosecutor to grant the Defence access to the listed documents and all documents in his possession pertaining to Jean Kambanda.

### *Prosecutor’s Response*

4. The Prosecutor maintains that it has complied with the provisions of Rule 66(A)(ii) of the Rules in respect of Witness Jean Kambanda.



5. The Prosecutor objects to the Defence request in its entirety, states that the applicable rule in this situation is Rule 66(B) of the Rules and highlights the materiality requirement of this rule. The Prosecutor quotes the Trial Chamber in the case of *The Prosecutor v. Pauline Nyiramasuhuko et al.* which held that the Defence “is required to show that their request is justified under Rule 66(B) of the Rules and, specifically that the requested documents are material to the preparation of the Defence”.<sup>1</sup> The Prosecutor submits that the basis of the Defence request is too broad and speculative to meet this requirement.

6. The Prosecutor rebuts the Defence claim of entitlement to disclosure in respect of materials which may contain “exculpatory material”, stating that the disclosure of exculpatory material is covered by Rule 68 of the Rules by virtue of which different conditions apply.

7. The Prosecutor objects specifically to the inspection of the material requested in paragraph 6(g), (h), (i) and (l) of the Motion. This material, the Prosecutor claims, consists of working notes of the Office of the Prosecutor and as such their disclosure is excluded under Rule 70 of the Rules.

8. The Prosecutor further objects to the request to inspect material listed in paragraph 6(a) and (f) of the Motion, stating that it has disclosed the book written by Jean Kambanda and has no knowledge of the existence of another book.

#### DELIBERATIONS

9. The Trial Chamber agrees with the Prosecutor’s submission that Rule 66(B) of the Rules is applicable in the particular circumstances of this case and not Rule 66(A)(ii) as stated by the Defence. Rule 66(B) reads as follows:

At the request of the defence, the Prosecutor shall, subject to Sub-rule (C), permit the defence to inspect any books, documents photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

10. However, according to Rule 67(C), if the Defence files an application pursuant to Rule 66(B), the Prosecutor shall in turn be entitled to inspect any books, documents, photographs and tangible objects, which are within the custody or control of the Defence and which it intends to use as evidence at the trial.

11. The Trial Chamber is of the view that the Defence should be reminded of the implications of such a request for inspection of documents, and that an explicit request

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<sup>1</sup> *Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No ICTR-97-29-T, “Decision on the Defence Motion for Disclosure of the Declarations of the Prosecutor’s Witnesses Detained in Rwanda, and all other Documents or Information Pertaining to the Judicial Proceedings in their Respect”, 18 September 2001, para. 12.




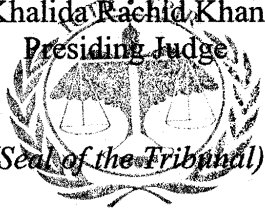
pursuant to the applicable Rules should be made by the Defence, if it deems it appropriate.

12. Therefore, the Trial Chamber is of the view that the Motion shall be denied in its entirety and that there is no need for the Trial Chamber to dilate on the merits of the Motion.

**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

**DENIES** the Motion.

Arusha, 25 May 2004

  
Khalida Rachid Khan  
Presiding Judge  
  
(Seal of the Tribunal)