

ICTR-99-50-T  
26-05-04  
(13576 - 13573)

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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

Ors: 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*

JUDICIAL RECORDS  
2004 MAY 26 10:10 AM  
ICTR

**DECISION ON PROSPER MUGIRANEZA'S MOTION PURSUANT TO RULE  
68 FOR EXCULPATORY EVIDENCE**

**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

**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 Emile Francis Short, (the “Trial Chamber”);

**BEING SEIZED** of “Prosper Mugiraneza’s Motion Pursuant to Rule 68 for Exculpatory Evidence” filed on 26 February 2004, (the “Motion”);

**NOTING** the “Prosecutor’s Response to Prosper Mugiraneza’s Motion Pursuant to Rule 68 for Exculpatory Evidence” filed on 25 March 2004, (the “Response”);

**TAKING INTO CONSIDERATION** the “Decision on the Prosecutor’s Motion for Protective Measures for Witnesses”, filed on 12 July 2000 (the “Protective Measures Decision”);

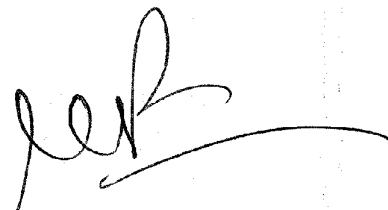
**ARGUMENTS OF THE PARTIES**

1. The Defence for Prosper Mugiraneza moves the Trial Chamber to order the Prosecutor to disclose information related to Witness CD, who would be in possession of exculpatory material.
2. According to the Defence, the Prosecutor has already disclosed an “investigator’s summary of an interview conducted on or about 23 September 1994 in Kibungo Prefecture with CD”. The Defence argues that, in making the disclosure, the Prosecutor did not mention the name or other identifying information of Witness CD. Neither did the Prosecutor specify the identity of the investigator who conducted the interview nor “the circumstances leading to the interview”.
3. The Defence, therefore, moves the Trial Chamber to order the Prosecutor to provide it with “a full copy of the investigative report related to CD’s interview, including but not limited to, the identity of the investigators and their agency; the identity of Witness CD; and the circumstances of the interview”. According to the Defence, since the Prosecutor has not designated Witness CD as a Prosecution Witness, this person is not covered by the Protective Measures Decision of 12 July 2000.
4. The Prosecutor responded belatedly that he is not in the possession of the documents requested by the Defence and that therefore the Motion should be denied.

**DELIBERATIONS**

5. Rule 68 of the Rules reads as follows:

(A) The Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the



innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.

6. According to the Defence, the statement of "Witness CD" contains exculpatory evidence. Without assessing the credibility or the nature of the evidence given by the statement given by "Witness CD", the Trial Chamber is of the opinion that the information provided by the Defence in the Motion can be considered as falling within the scope of Rule 68.

7. The Trial Chamber notes that, according to the Prosecutor, "Witness CD" is not a potential Prosecution Witness.<sup>1</sup> The Trial Chamber is therefore of the view that "Witness CD" is not covered by the Protective Measures Decision. The Defence is free to conduct its own enquiries as it deems fit, without reference to the Prosecutor or to the Trial Chamber.

8. However, it appears that the Prosecutor has only disclosed a report of an interview with "Witness CD". The Trial Chamber notes that this report does not contain any information which will enable the Defence to analyse the content of the statement or to conduct any investigation. The Trial Chamber has no information as to whether "Witness CD" has also given a statement to investigators of the Tribunal and will not speculate on the existence of such statement. Nevertheless the Trial Chamber considers that, as this document was disclosed to the Defence by the Prosecutor, the Prosecutor must be aware of the whereabouts of this person and of the circumstances in which such interview took place.

9. The Prosecutor is duty bound to disclose to the Defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the Accused or may affect the credibility of the Prosecutor evidence, pursuant to Rule 68 of the Rules. This does not mean that the Prosecutor should hunt for materials that he has no knowledge of. It does mean, however, that where the Defence has specific knowledge of a document covered by the Rule and which is not currently within the possession or control of the Prosecutor, and requests that document in specific terms, the Prosecutor should attempt to gain control or possession over that document where the circumstances suggest that the Prosecutor is in a better position than the Defence to do so. Once this is successfully done, that document should be disclosed to the Defence. This obligation stems from the Prosecutor's inherent duty to fully investigate a case before this Tribunal.

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

**GRANTS** the Motion in the following terms:

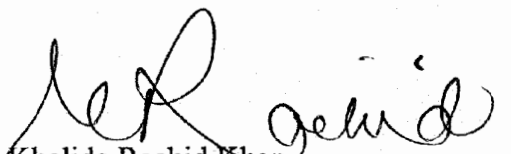

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<sup>1</sup> Confirmation by email from the Office of the Prosecutor to Court Management Section, 22 March 2004.

**ORDERS** the Prosecutor to take all necessary measures to obtain the requested information and to thereafter disclose to the Defence all information related to "Witness CD".

**REMAINS** seized of the matter.

Arusha, 25 May 2004

  
Khalida Rashid Khan  
Presiding Judge  
  
(Seal of the Tribunal)