



ICTR-99-50-T
03-09-2004
(16346-16342)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

16346
Mwajje

Or: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga
Judge Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 3 September 2004

The PROSECUTOR

v.

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

JUDICIAL RECORDS/ARCHIVES
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**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR ADJOURNMENT
OF 13 SEPTEMBER TRIAL SESSION**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Elvis Bazawule
Mr. Justus Bwonwonga
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-Clément Bicomumpaka
Mr. Tom Moran for Prosper Mugiraneza

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

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga and Judge Emile Francis Short, (the "Trial Chamber");

BEING SEIZED of "Prosper Mugiraneza's Emergency Motion for Continuance of 13 September 2004 Trial Session" filed on 23 August 2004, (the "Motion");

NOTING "Confidential exhibits E and F to Prosper Mugiraneza's Emergency Motion for Continuance of 13 September 2004 Trial Session" filed on 23 August 2004;

NOTING the Facsimile Transmission ICTR-JUD-11-2-5-2543 of 20 August 2004 sent by Ms Aminatta L.R. N'Gum, Deputy Chief and OIC Defence Counsel and Detention Management Section (DCDMS) to Mr Tom Moran concerning reimbursement of air fares and Daily Subsistence Allowance (DSA);

NOTING the "Prosecutor's Response to Prosper Mugiraneza's Emergency Motion for Continuance of 13 September 2004 Trial Session" filed on 27 August 2004;

NOTING Counsel's letter to the Registry filed on 1 September 2004 in which Counsel indicates that due to an unexpected payment of a fee by a client, Counsel has been able to purchase a return ticket to Arusha and therefore the Motion can be dismissed as moot;

NOTING the "Registrar's Representation Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding Prosper Mugiraneza's Emergency Motion for Continuance of 13 September 2004 Trial Session" filed on 2 September 2004;

WHEREAS the Defence moves the Tribunal to adjourn the trial session set to begin on 13 September 2004 due to "Counsel's inability to advance travel expenses to Arusha" because of the failure of the Registry to reimburse the following: past airline tickets and DSA for Counsel's Legal Assistant;

WHEREAS Counsel stipulates that he will be able to appear "if the Registry purchases a pre-paid airline ticket" under the same conditions as United Nations staff members;

WHEREAS Counsel recalls correspondence to the Registry since June 2004 in which the issues of payment of previously purchased tickets had been raised and in which Counsel had indicated that he would not pay for further tickets to Arusha unless the Tribunal reimbursed him for the cost of those used tickets;

WHEREAS Counsel indicates that the Motion should not be interpreted as a refusal to attend trial or refusal to purchase a ticket but is based on Counsel's inability to purchase the ticket until reimbursement is done as Counsel is in no position to advance funds for travel expenses;

WHEREAS Counsel argues that this problem directly impacts the right of the Accused to a trial without undue delay and adds that equality of arms requires that Defence and Prosecutor be treated the same in this regard;

WHEREAS Counsel argues that if the Registry prepays a ticket or reimburses him the Motion will become moot and should be dismissed;

WHEREAS the DCDMS answered some of Counsel's queries on 20 August 2004 stating that some documents were missing for the reimbursement of part of an air fare and for the DSA pursuant to the Directive on the Assignment of Defence Counsel (the "Directive"). In that correspondence, the Section also informed Counsel that the Finance Section had processed fee payment and travel claims for a total sum amounting to US\$ 25,244.87 to be paid onto his account the following week;

WHEREAS in the same correspondence, the DCDMS reminded Counsel that matters relating to reimbursement of expenses and payment of fees were within the Registrar's jurisdiction and that in the event of a dispute, Counsel should initially take up the matter with the Deputy Registrar and then the Registrar pursuant to Article 30 of the Directive;

WHEREAS the Prosecution submits that the matter raised by Counsel is administrative and falls within the mandate of the Registrar; that the Trial Chamber should direct Counsel and the Registrar to resolve the matter in a timely manner; that the matter should be resolved before 6 September for the trial to proceed as scheduled.

WHEREAS the Registrar submits that in view of the facts listed in his submissions, and having quoted Articles 17(A), 17 (D) and 27 (A) of the Directive, the Motion is "not only moot, but frivolous, vexatious and without substance or merit and should be dismissed". In essence, the Registrar notes that Counsel's inability to comply with the relevant rules for reimbursement of travel expenses caused delays in processing the reimbursement. It notes that most missing documents necessary for the processing of the reimbursement were received by the registry after the filing of the Motion. Moreover the Registrar notes that by the time the Motion was filed on 23 August 2004, Counsel for Mugiraneza had already received adequate funds (payment and reimbursement of other expenses) to pay for a return ticket to Arusha.

DELIBERATION

1. The Chamber is mindful of the difficulties Counsel has indicated. However, the Chamber recalls that settlement of disputes relating to the payment of remuneration or the reimbursement of expenses of Counsel is under the jurisdiction of the Registrar who may make a decision after consulting the President and if necessary, the Advisory Panel, pursuant to Article 30 of the Directive. This procedure must be followed. Recourse to the Trial Chamber in fees dispute issues should only be had in exceptional circumstances. It should be resorted to only when Counsel has utilised all other available channels without results, and Counsel can demonstrate that the Registry is acting unreasonably and that the dispute directly affects the conduct of the trial. The present Motion does not show that

Counsel has exhausted such prior procedures to obtain a remedy. Consequently, the Trial Chamber rejects the Motion as being improperly filed before it.

2. With respect to this procedural aspect, the Chamber notes the comment in the Texas Disciplinary Rules of Professional Conduct,¹ which applies to Counsel for Mugiraneza in his national jurisdiction, and notes the following regarding client-lawyer relationship in relation to 'Fee Disputes and Determinations' (section 1.04 Fees):

12. If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by a bar association, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyers fee, for example, in representation of an executor or administrator, or when a class or a person is entitled to recover a reasonable attorneys fee as part of the measure of damages. All involved lawyers should comply with any prescribed procedures.

3. Counsel asserts in paragraph 9 of his Motion paper that 'Nothing in this motion should be interpreted as a *refusal* to attend the trial session set to begin on 13 September 2004. Nor should anything be interpreted as a refusal to purchase a ticket to Arusha for the trial session. Rather, this motion is based on counsel's *inability* to purchase airline tickets to travel to Arusha until such time as the Registry reimburses him for previous travel. The Chamber is not persuaded that the object of this submission is borne out on the record. Rather, the wording and tenor of the Motion and that of the supporting Annexes clearly portray an unjustifiable *refusal* by Counsel to be present for the trial session.

4. In this context, the Chamber wishes to remind Counsel of his duties towards his client and towards the Tribunal. The Chamber recalls that pursuant to the Tribunal's Code of Professional Conduct for Defence Counsel, "Counsel must represent a client diligently in order to protect the client's best interests" (Article 6) and that Counsel must put the interests of the client before his own interests or of those of any other person (Article 9(1)).

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

REJECTS the Motion;

DENIES payment of fees and costs associated to the filing of the Motion and **ORDERS** the Registrar not to pay the costs and fees associated with the filing of the Motion.

¹ Tex. Disciplinary R. Prof. Conduct, (1989) reprinted in Tex. Govt Code Ann., tit. 2, subtit. G, app. (Vernon Supp. 1995)(State Bar Rules art X [[section]]9). See also Commentary 9 to Rule 1.5 of the 2003 Version of the American Bar Association Model Rules of Professional Conduct.

