



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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

ORDER FOR THE TRANSFER OF A DETAINED WITNESS FROM RWANDA (RULE 90 *bis*)

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. George William Mugwanya
Mr. Shyamlal Rajapaksa
Mr. William Mubiru
Mr. Olivier De Schutter

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-Clément Bicamumpaka

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 the “Prosecutor’s Extremely Urgent *Ex Parte* Motion for an Order for the Transfer of Detained Witness Pursuant to rules 90 *bis* and 73 (A) of the Rules of Procedure and Evidence”, filed on 30 August 2004 (the “Motion”);

NOTING the “Prosecutor’s Extremely Urgent *Ex Parte* Motion for an Order for the Transfer of Detained Witnesses Pursuant to rules 90 *bis* and 73 (A) of the Rules of Procedure and Evidence – Letter from the Rwandan Authorities”, filed on 2 September 2004 (the “Annex”);

1. The Prosecution requests the Trial Chamber, pursuant to Rule 90 *bis* of the Rules of Procedure and Evidence (the “Rules”), to order the temporary transfer of Witness GKJ from the Republic of Rwanda, where he is currently detained. The request further specifies that the witness is needed for transfer on or before Monday 13 September 2004, ready for the recommencement of proceedings in this case.
2. The Prosecution provides the following assurances to the Chamber:
 - (i) The presence of the witness is not required for any criminal proceedings in the Republic of Rwanda during the period he is required to be present at the Tribunal as a Prosecution Witness;
 - (ii) The transfer of the witness will not extend the period of his detention as foreseen by the Republic of Rwanda.
3. The Prosecution provides as an Annex a letter from the Ministry of Justice in Rwanda addressed to the Prosecutor of the Tribunal confirming that Witness GKJ (amongst others contained on a list) is available to give testimony before the Tribunal.[\[1\]](#)

DELIBERATIONS

4. The Trial Chamber notes that pursuant to the provisions of Rule 90 *bis* (A) of the Rules:

- i) Any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.
5. Pursuant to Rule 90 *bis* (B) of the Rules, a Trial Chamber shall issue a transfer order only after prior verification that the following conditions are met:
- ii) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
- iii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;
6. On the basis of representations made by the Prosecution and the Annex provided, which include a letter from the Ministry of Justice in Rwanda, the Chamber finds that the requirements set out in Rule 90 *bis* of the Rules for the temporary transfer of detained witnesses have been satisfied.
7. The Chamber is aware that the Registry requires significant advance notice in order to properly facilitate the transfer of detained witnesses from Rwanda to Arusha, and also some flexibility in the timing, which must be worked out in consultation with the Governments of Rwanda and Tanzania. The Chamber thus views it as appropriate that such flexibility be incorporated into the order for transfer, whilst remaining strictly within the maximum limits allowed. From the date of transfer, the Chamber decides that the detained witnesses to be transferred should remain at the United Nations Detention Facility in Arusha (the "UNDF") for the shortest period practically possible in order to allow for their testimony to be heard, and in any event a period of time not exceeding one month without further prior approval.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

ORDERS the Registry, pursuant to Rule 90 *bis* of the Rules, to temporarily transfer Detained Witness GKJ to the UNDF, at an appropriate time prior to his anticipated testimony during the trial session set to recommence on 13 September 2004. His return travel should be facilitated as soon as practically possible after his testimony has ended. In any event, without prior approval from the Chamber, his return into Rwandan custody should be facilitated at a time not later than one month from the date of transfer to the UNDF;

REQUESTS the Governments of Rwanda and Tanzania to cooperate with the Registry in the implementation of this Order.

Arusha, 3 September 2004

Khalida Rachid Khan	Lee Gacuiga Muthoga	Emile Francis Short
Presiding Judge	Judge	Judge

(Seal of the Tribunal)

[\[1\]](#) Confidential letter dated 31 August 2004.