



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: 10 December 2004

THE PROSECUTOR

v.

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

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO REMOVE
CONFIDENTIALITY FROM PORTIONS OF THE PROSECUTOR'S PRE-
TRIAL BRIEF**

Office of the Prosecutor

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Elvis Bazawulu
Mr. Justus Bwonwonga
Mr. Shymal Rajapaska

Counsel

for

the

Defence

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for	Casimir Bizimungu
Mr. Ben Gumpert for	Justin Mugenzi

Mr. Pierre Gaudreau and Michel Croteau for **Jérôme-Clement Bicamupaka**
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,
Judge Lee Gacuiga Muthoga, and Judge Emile Francis Short (the “Chamber”);

BEING SEISED OF “Prosper Mugiraneza’s Motion to Remove Confidentiality from
Portions of the Prosecutor’s Pre-trial Brief” filed on 24 September 2004 (the “Motion”);

NOTING THAT the Prosecution has not filed any response to the Motion;

CONSIDERING the Statute of the Tribunal (the “Statute”), and the Rules of Procedure
and Evidence (the “Rules”);

HEREBY DECIDES the Motion on the basis of the written submissions of the Defence
pursuant to Article 73 (A) of the Rules.

SUBMISSIONS

1. Relief Sought

2. The Defence for Mugiraneza requests the Chamber to remove confidentiality from
those portions of the Prosecution Pre-Trial Brief which do not identify witnesses, relate
only to legal issues, or to the expected testimony of witnesses without revealing
identifying information.

Supporting Arguments

3. The Defence asserts that in October 2003, the Prosecution filed its Pre-Trial Brief as a
confidential document and that this was necessary to protect the identities of various
Prosecution witnesses.

4. The Defence however argues that since the Prosecution case is drawing to a close, it is
undesirable to maintain the confidential status of some parts of the Pre-Trial Brief.

5. The Defence informs the Chamber that it is preparing a motion for judgment of
acquittal pursuant to Rule 98bis and that it is its wish to file this motion as a public
document. However, the Defence notes that since it would need to quote from the Pre-
Trial Brief, it would be impossible for it to file the Rule 98bis motion as a public
document or it will have to be broken into public and confidential parts.

6. The Defence argues that it will be simpler for both the Prosecution and the Defence if
the Motion was filed as a single document. The Defence further argues that it is in the
interests of both the Tribunal and the public for the motion to be a public document.

7. The Defence also submits that most of the portions of the Prosecution Pre-Trial Brief that it intends to quote in its Rule 98*bis* Motion will be legal propositions or factual assertions not involving any possibility of identifying witnesses. According to the Defence assertion, there is no reason to keep these portions confidential, and there is a great public interest in having the press and the public review the respective positions of the Parties.

8. For the above reasons, the Defence prays that the Chamber remove confidentiality from those portions of the Prosecution Pre-Trial Brief which relate to:

(i) Propositions of law made by the Prosecutor;

(ii) The Prosecution legal theories;

(iii) General statements of fact which the Prosecution purported to prove;

(iv) The expected testimony of witnesses provided those witnesses are identified only by pseudonym.

DELIBERATIONS

9. As a preliminary matter, the Chamber observes that the Defence has not cited any Rule in support of the relief sought. The Chamber will therefore consider the Motion under the general provisions of Rule 73(A) and the power conferred upon it under Rule 54.

10. The Chamber is cognisant of the provisions of Article 19(4) of the Statute. In principle, it is preferable that hearings are conducted in public, and this includes making public as much of the written pleadings and Decisions as is possible. However, it is of primary importance that in doing so, the Chamber does not compromise the safety of victims and witnesses involved in the proceedings.

11. The Defence requests that those portions of the Pre-Trial Brief involving legal propositions, legal theories, statements of fact and expected witness testimonies are made public. The Defence does not wish to have those portions which reveal confidential identifying information made public.

12. Apart from this general guidance, the Defence does not provide exact guidance on the portions of the Pre-Trial Brief to remain confidential and the portions to be made public. The Chamber observes that the Prosecution Pre-Trial Brief, together with its annexes and tables, cover two hundred and sixteen (216) pages. Pages 1 to 95, which contain the main part of the Pre-Trial Brief, are divided into two hundred and fifty two (252) paragraphs.

13. The Chamber is mindful of the rights of the Accused, but recalls that it must exercise caution in taking measures that are likely to affect the protection afforded to witnesses who appear before the Tribunal. It is the responsibility of the Defence to provide the Chamber with all the information that is necessary to enable it to reach a reasoned

decision in the interests of justice. The Chamber considers that in the instant application, the Defence has not adequately discharged this responsibility.

14. Therefore, the Chamber considers that the Motion as currently formulated is imprecise and should be dismissed. This dismissal is however made without prejudice to the filing of a reformulated request containing a more precise description of the relief requested and the justification thereto.

FOR THE ABOVE REASONS, THE CHAMBER

DISMISSES the Motion in its entirety.

Arusha, 10 December 2004

Khalida Rachid
Khan

Presiding Judge

Lee Gacuiga
Muthoga

Judge

Emile Francis
Short

Judge

[Seal of the Tribunal]