



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
04-02-2004
(2045-20242)

2045
Mugiraneza

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 4 February 2005

The Prosecutor

v.

Casimir BIZIMUNGU
Justin MUGENZI
Jérôme-Clément BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

**DECISION ON PROSPER MUGIRANEZA'S MOTION FOR APPROPRIATE
RELIEF FOR VIOLATION OF RULE 66**

Office of the Prosecutor

Mr. Paul Ng'arua
Mr. Ibukunolu Alao Babajide
Mr. Elvis Bazawule
Mr. Justice Bwonwonga
Mr. Shymal Rajapaska
Mr. William Mubiru
Mr. Olivier De Shutter

Counsel for the Accused

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marciel for **Casimir Bizimungu**
Mr. Ben Gumpert for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran for **Prosper Mugiraneza**

JUDICIAL RECORDS/ARCHIVES
ICTR
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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 SEIZED of “Prosper Mugiraneza’s Motion for Appropriate Relief for Violation of Rule 66” filed on 4 October 2004 (the “Motion”);

CONSIDERING

- i) The “Prosecutor’s Response to Prosper Mugiraneza’s Motion for Appropriate Relief for Violation of Rule 66,” filed on 11 October 2004 (the “Prosecution Response”);
- ii) “Prosper Mugiraneza’s Reply to the Prosecutor’s Response to Prosper Mugiraneza’s Motion for Appropriate Relief for Violation of Rule 66” filed on 15 October 2004 (the “Defence Reply”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), in particular Rule 66 of the Rules;

NOW DECIDES the Motion solely on the basis of the written briefs filed by the Parties, pursuant to Rule 73(A) of the Rules.

SUBMISSIONS OF THE PARTIES

The Defence

1. In its Motion, the Defence submits that the Motion is the “latest in a series of Motions filed by Mugiraneza seeking relief for the repeated violations by the Office of the Prosecutor of the disclosure requirements in Rule 66.”¹ The Defence enumerated specific instances where the Prosecution violated its disclosure obligations under Rule 66(A)(ii), thereby requesting the Chamber to intervene to prevent future systematic violations of the said Rule.

2. The Defence submits that in the past the Prosecution has disclosed documents envisaged under Rule 66, only when the Defence moved the Trial Chamber by Motion to order the Prosecution to comply with its disclosure obligations or when the Prosecution “stumbles on them by pure happenstance.” In order to prevent this, the Defence suggests that the Chamber should take strong action against the Prosecution for contemptuous conduct each time it violates the Rules, or that the Chamber hold that “late disclosure amounts to no disclosure,” if the Prosecution does not provide an acceptable explanation. (Defence emphasis)

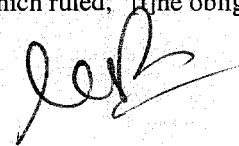
Prosecution Response

3. The Prosecution, relying on the International Criminal Tribunal for the Former Yugoslavia (the “ICTY”) Decisions in *Delalic*,² and in *Blaskic*,³ submits that it has diligently

¹ See the Motion at paragraph 1

² *Prosecutor v. Delalic et al.*, Case No. IT-96-21, Decision on Motion by the Defendants on the Production of Evidence by the Prosecution, [TC], 8 September 1997, para. 10 (the *Delalic* Decision).

³ *Prosecutor v. Blaskic*, Case No. IT-95-14, Decision on Prosecutor’s Request for Authorization to Delay Disclosure of Rule 70 information, [TC], 6 May 1998 at paras. 6 and 7, which ruled, “[t]he obligation of the



complied with its disclosure obligations, particularly those of Rule 66. The Prosecution argues that after commencement of the trial, the application of Rule 66(A)(ii) should be within reason.

4. The Prosecution submits that the Defence does not seek any identifiable redress, rather the Defence catalogues what the Prosecution submits are "his imagined infractions by the Prosecutor for matters that are foreclosed."⁴ The Defence has not indicated any prejudice that the Chamber should redress.

5. The Prosecution submits that the Defence has failed to ground its Motion under any provision of the Rules or to show any *mala fides* on the part of the Prosecution. The Prosecution thus prays that the Chamber dismiss the Motion and sanction the Defence under Rules 73(F) and 46 of the Rules.

Defence Reply

6. In relation to the alleged disclosure violation committed by the Prosecution, the Defence reiterates its request for relief, adding that, "[T]imely disclosure is important for reasons other than cross-examination, although it is important for that reason. Timely disclosure allows the defence to shape a defence to meet the Prosecutor's evidence [and that] without timely disclosure the defence cannot plan investigations and cannot plan strategy." The Defence argues that by ordering the Prosecution to adhere to its disclosure obligations, the Chamber would be preventing a "trial by ambush."⁵

HAVING DELIBERATED

7. The Chamber notes that in its Motion, the Defence argues that the Prosecution has violated its disclosure obligations under Rule 66(A)(ii) by filing late a number of transcripts of testimonies and written statements of its witnesses which were made months, and in some cases years, before the Prosecution disclosed them to the Defence. The Defence thus requests the Chamber to sanction the Prosecution for its alleged violation of its disclosure obligations under Rule 66.

8. The Chamber further notes that the Defence submits that the instant Motion is the "latest in a series of Motions filed by Mugiraneza seeking relief for the repeated violations by the Office of the Prosecutor of the disclosure requirements in Rule 66." The Chamber is of the opinion that, if the series of Motions the Defence alludes to were dealt with by the Chamber, then this instant Motion is unnecessary.

9. While the Chamber is mindful of the importance of the Prosecutor's obligation to meet its disclosure obligations under the Rules, it also wishes to emphasize that breaches of this obligation should be addressed promptly.

10. The Chamber observes that the Defence in its Motion has not demonstrated any prejudice it has suffered but has merely enumerated a list of the alleged violations of disclosure obligations by the Prosecution. Furthermore, it failed to act diligently by promptly

Prosecutor to disclose certain documents to the Defence, including prior witness statements, as required by Rule 66(A), is general and permanent."

⁴ See the Prosecutor's Response at para. 4

⁵ See the Defence's Reply at para. 7

filing a Motion when the alleged disclosure obligations by the Prosecution occurred, but waited until almost one year after commencement of the trial. The Chamber is of the opinion that parties should act diligently and expeditiously whenever there is an alleged violation of the Rules.

11. Accordingly, the Chamber holds that the Motion is belated and that any Decision it makes now will be of no immediate relevance either to the Parties or to the Court. Consequently, the Chamber declares the Defence request moot.

12. The Chamber, therefore, does not find it necessary to go into the merits of the enumerated instances of the Prosecution's alleged violations of its obligations under Rule 66.

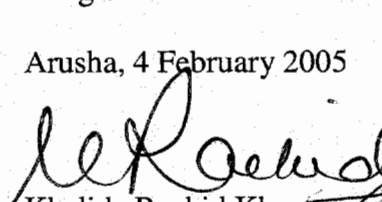
13. The Chamber finds that the arguments presented in the Motion lack merit to such an extent that the Motion is frivolous and that its filing constitutes an abuse of process.

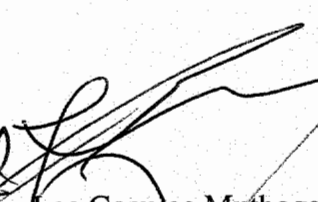
FOR THE ABOVE REASONS, THE TRIBUNAL

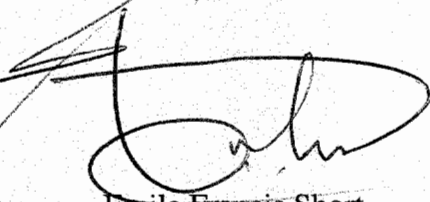
DECLARES the Motion moot;

DIRECTS the Registry, pursuant to Rule 73(E), not to pay fees and costs associated with the filing of this Motion.

Arusha, 4 February 2005


Khalida Rachid Khan
Judge


Lee Gacunga Muthoga
Judge


Emile Francis Short
Judge

