



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

ICTR-99-50-T
06-05-2005
(21334-21331)

21334
12

Or: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 6 May 2005

JUDICIAL RECORDS/ARCHIVES
ICTR
2005 MAY -6 A 11:45
[Signature]

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 ORDER A WITNESS
TO BE RETURNED FOR FURTHER CROSS-EXAMINATION OR IN THE
ALTERNATIVE TO STRIKE HIS TESTIMONY BASED UPON LATE
DISCLOSURE OF RULE 68 MATERIAL**

Office of the Prosecutor:

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

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: Felicien A. T. Nshimirimana
SIGNATURE: [Signature] DATE: 06/05/05

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 Mr. Michel Croteau for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

[Handwritten signature]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the “Tribunal”),

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

BEING SEIZED of “Prosper Mugiraneza’s Motion to Order Witness GKJ Returned for Further Cross-Examination or, to Strike Out His Testimony in Whole Based on the Failure of the Prosecutor to Timely Disclose Rule 68 Material” filed on 7 April 2005 (the “Motion”);

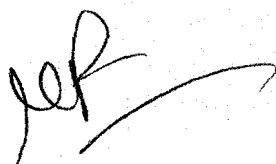
CONSIDERING (i) the “Confidential Annex to Prosper Mugiraneza’s Motion to Order Witness GKJ Returned for Further Cross-Examination or, to Strike Out His Testimony in Whole Based on the Failure of the Prosecutor to Timely Disclose Rule 68 Material” filed together with the Motion on 7 April 2005; (ii) the “Brief from Casimir Bizimungu in Support of Prosper Mugiraneza’s Motion to Order Witness GKJ Returned for Further Cross-Examination or, to Strike Out His Testimony in Whole Based on the Failure of the Prosecutor to Timely Disclose Rule 68 Material” filed on 12 April 2005 (the “Bizimungu Response”); (iii) the “Prosecutor’s Response to Prosper Mugiraneza’s Motion for the Recall of Witness GKJ or to Strike Out GKJ’s Testimony Because of the Untimely Disclosure of Rule 68 Material, and Casimir Bizimungu’s Brief in Support Thereof” filed on 12 April 2005 (the “Response”); (iv) “Prosper Mugiraneza’s Reply to the Prosecutor’s Response to Prosper Mugiraneza’s Motion to Order Witness GKJ Returned for Further Cross-Examination or, to Strike Out His Testimony in Whole Based on the Failure of the Prosecutor to Timely Disclose Rule 68 Material” filed on 13 April 2005 (the “Reply”);

CONSIDERING the Rules of Procedure and Evidence (the “Rules”), particularly Rules 66 and 68 of the Rules;

SUBMISSIONS

1. The Defence wants the Chamber to make an order for the recall of Witness GKJ for further cross-examination. This request arises out of the late disclosure of a statement of the Witness, being the recording and transcript of a radio interview in which he took part.¹ According to the Defence, the Prosecution disclosed this statement seven months after he testified, and even then, only in Kinyarwanda. Alternatively, the Defence seeks that the testimony of the witness be stricken from the record. The Defence for Casimir Bizimungu joins the Defence for Prosper Mugiraneza in its request.
2. The Prosecution agrees that Witness GKJ should be returned to the stand, with two conditions. First, that he be returned for cross-examination strictly on the point of the newly disclosed material. Second, that he is given the newly disclosed material prior to his cross-examination, so that he is aware of the reason for his recall prior to his cross-examination.

¹ KT-00-1169 (audio CD) and KT-014-2003-K014-2025 (transcript)



3. In reply, the Defence submits that if Witness GKJ is returned to the stand, his testimony should properly be treated as a continuation of his earlier testimony, and thus he should not be forewarned of the reason for his return to Arusha. Had the Prosecution been diligent in its work and disclosed the statement on time, the Witness would not have been warned of the broadcast prior to his testimony. Therefore, a proper remedy of the situation requires that he should not be forewarned.

DELIBERATIONS

4. The Chamber is persuaded by the submissions of the Parties, who are in agreement on the matter, that the interests of justice require that the Chamber grant the request to return Witness GKJ to the stand for cross-examination on the statement, which was disclosed late by the Prosecution.
5. However, this witness has already given his evidence, and this will not be an opportunity to introduce new matters. This witness is being returned to the stand solely to deal with the issue of the prior statement identified by the Parties.
6. This witness need not be forewarned of the reason for his return. The reason will be disclosed in court.
7. In the event that Witness GKJ is not brought back for further cross-examination, the Chamber does not see any justification for striking out from the record his entire testimony because of the Prosecution's late disclosure under Rule 68. However, in assessing his entire testimony, the Chamber would take into account the late disclosure of the Witness's prior statement and the fact the Defence did not have an opportunity to cross-examine the Witness on this statement.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

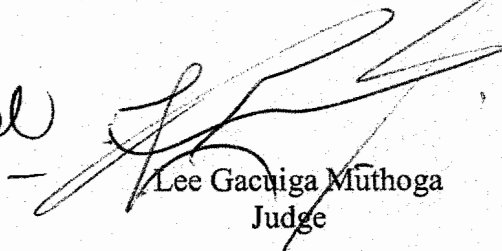
GRANTS the Motion in the following terms:

ORDERS that Prosecution Witness GKJ be returned to Arusha for cross-examination on his prior statement, identified above.

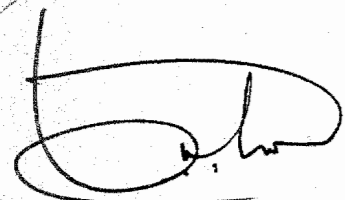
Arusha, 6 May 2005



Khalida Rachid Khan
Presiding Judge



Lee Gacigira Muthoga
Judge



Emile Francis Short
Judge

