



UNITED NATIONS  
NATIONS UNIES

ICTR-99-50-T  
06-05-2005  
(21337-21335)  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

21337  
RQ

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  
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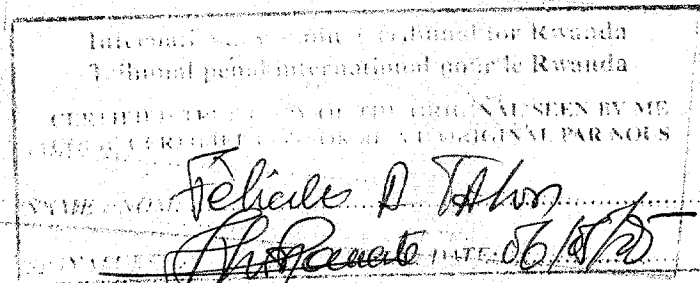
**The PROSECUTOR**  
v.  
**Casimir BIZIMUNGU**  
**Justin MUGENZI**  
**Jérôme-Clément BICAMUMPAKA**  
**Prosper MUGIRANEZA**

**Case No. ICTR-99-50-T**

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

**Office of the Prosecutor:**

Mr. Paul Ng'arua  
Mr. Ibukunolu Babajide  
Mr. Justus Bwonwonga  
Mr. Elvis Bazawule  
Mr. Shyam Lal 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. Ben Gumpert for Justin Mugenzi  
Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicomumpaka  
Mr. Tom Moran and Ms. Marie-Pierre Poulain for Prosper Mugiraneza

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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 the "Prosecutor's Extremely Urgent *Ex Parte* Motion for an Order for the Transfer of Detained Witness GKJ Pursuant to rules 90 *bis* and 73 A of the Rules of Procedure and Evidence", filed on 12 April 2005 (the "Motion").

**SUBMISSIONS**

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 GJQ from the Republic of Rwanda, where he is currently detained.
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 beyond the period of his detention as forseen by the Republic of Rwanda.
3. The Prosecution has transmitted to the Chamber as a confidential Annex a letter from the Ministry of Justice in Rwanda addressed to the Deputy Prosecutor of the Tribunal confirming that Witness GKJ is available to give testimony before the Tribunal, pursuant to the requirements of Rule 90 *bis* of the Rules of Procedure and Evidence.<sup>1</sup>

**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:

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<sup>1</sup> Confidential letter dated 25 April 2005.



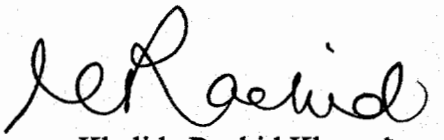
- ii) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal;
  - iii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State;
6. On the basis of representations made by the Prosecution and the confidential Annex provided, 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 considers it 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 witness to be transferred should remain at the United Nations Detention Facility in Arusha (the "UNDF") for the shortest period practically possible to ensure that his testimony is taken, and in any event for a period not exceeding one month without further prior approval.

**FOR THE ABOVE REASONS, THE TRIAL CHAMBER**

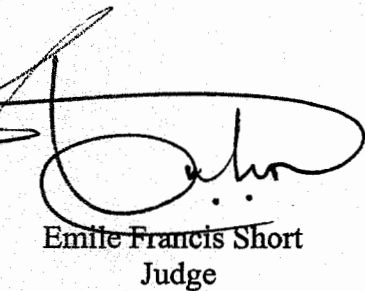
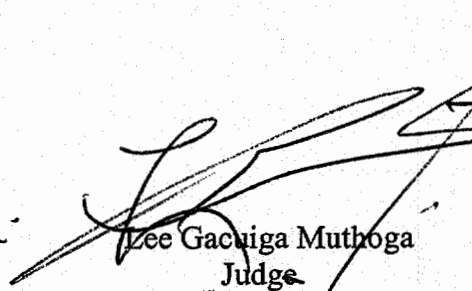
**ORDERS** the Registry, pursuant to Rule 90 *bis* of the Rules, to transmit the Chamber's Order to the Rwandan authorities and to ensure the proper conduct of the transfer of Detained Witness GKJ to the UNDF, at an appropriate time prior to his anticipated testimony during the current trial session. His return travel should be facilitated as soon as practically possible after the end of his testimony. 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, 6 May 2005



Khalida Rachid Khan  
Presiding Judge



Lee Gacuga Muthoga  
Judge

Emile Francis Short  
Judge

