



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-99-50-T  
07-07-2005  
(21551-21548)

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UNITED NATIONS  
NATIONS UNIES

TRIAL CHAMBER II

Or: ENG

**Before:** Judge Emile Francis Short

**Registrar:** Mr. Adama Dieng

**Date:** 7 July 2005

**The PROSECUTOR**

v.

**Casimir BIZIMUNGU**

**Justin MUGENZI**

**Jérôme-Clément BICAMUMPAKA**

**Prosper MUGIRANEZA**

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

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**DECISION ON JÉRÔME BICAMUMPAKA'S NOTICE OF ALIBI**

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**Office of the Prosecutor:**

Mr. Paul Ng'arua

Mr. Ibukunolu Babajide

Mr. Elvis Bazawule

Mr. Justus Bwonwonga

Mr. Shyamlal Rajapaksa

**Counsel for the Defence:**

Mr. Pierre Gaudreau and Mr. Michel Croteau, for *Jérôme Bicomumpaka*

Mr. Tom Moran and Ms. Marie-Pierre Pouline, for *Prosper Mugiraneza*

Ms. Michelyne St. Laurent and Ms. Alexandra Marcil, for *Casimir Bizimungu*

Mr. Ben Gumpert, for *Justin Mugenzi*

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

**SITTING** as Judge Emile Francis Short, designated by Trial Chamber II, in accordance with Rule 73 (A) of the Rules of Procedure and Evidence (the “Chamber”);

**SEISED** of the “Notice of Alibi from the Defence of Jérôme Bicomumpaka”, filed on 18 May 2005 (the “Notice of Alibi”);

**CONSIDERING** the “Prosecutor’s Response to Notice of Alibi from the Defence of Jérôme Bicomumpaka”, filed on 24 May 2005 (the “Response”);

**HEREBY DECIDES** as follows:

### **INTRODUCTION**

1. On 18 May 2005, the Bicomumpaka Defence filed a Notice of Alibi, setting forth times and locations where the Accused claims to have been present between 6 April 1994 and 19 July 1994. In its Response, the Prosecution asserts that the Notice of Alibi fails to comply with Rule 67 (A) (ii) (a) of the Rules because it does not provide the names and addresses of most of the witnesses or other particulars, on which the Accused intends to rely to establish his alibi. The Prosecution also submits that, without this information, it is unable to investigate the evidence upon which the alibi relies, which is the purpose of this notice.

### **DELIBERATIONS**

#### *Specificity of the Notice of Alibi*

2. Pursuant to Rule 67 (A) (ii) (a) of the Rules, the Defence shall notify the Prosecutor of its intent to enter the defence of alibi as early as reasonably practicable and in any event prior to the commencement of the trial. The Rule also provides that:

the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

3. The purpose of Rule 67 (A) (ii) (a) is to enable the Prosecution to test the evidence upon which the Accused relies in support of the defence of alibi. Indeed, as the Appeals Chamber held, the Rule “allows the Prosecution to

organize its evidence and to prepare its case prior to the commencement of trial on the merits”.<sup>1</sup>

4. The purpose of Rule 67 (A) (ii) (a) also was considered by the Appeals Chamber in *Kayishema and Ruzindana*, which held that:

the purpose of entering a defence of alibi or establishing it at the stage of reciprocal disclosure of evidence is only to enable the Prosecutor to consolidate evidence of the accused’s criminal responsibility with respect to the crimes charged.<sup>2</sup>

5. In light of this established jurisprudence, the Chamber considers that the Notice of Alibi provided by the Bicomumpaka Defence does not provide all of the information called for by Rule 67 (A) (ii) (a). This Rule is to be considered in conjunction with the provisions of Rules 69 and 75. Accordingly, the Chamber urges the Defence to provide the names and addresses of all witnesses, and any other material information, upon which the Accused intends to rely to establish his alibi, as early as reasonably practicable. Failure to provide timely disclosure may impair the interests of fair trial proceedings and undermine the Prosecution’s ability to prepare its case and investigate the evidence on which the alibi defence rests. The Chamber emphasizes that failure to provide timely disclosure may affect the Chamber’s evaluation of the reliability of the alibi defence.

#### *Relationship between the Notice of Alibi and Witness Protection Measures*

6. In its Decision of 27 June 2005, the Chamber issued protection orders, in respect of Defence witnesses, that:

The disclosure to the Prosecution of the names, addresses, whereabouts of, and other identifying data which reveal or may identify Defence witnesses, and any other information in the supporting material on file with the Registry is prohibited until such time as the Chamber is assured that the witnesses have been afforded an adequate mechanism for protection. The Defence is authorised to disclose any material to the Prosecution in a redacted form until such a mechanism is in place, and, in any event, the Defence is under no obligation to reveal the identifying data to the Prosecutor sooner than twenty-one (21) days before the witness is due to testify at trial, unless the Chamber decides otherwise pursuant to Rule 69 (A) of the Rules. [emphasis added]

7. The Chamber considers that the above protection orders extend to all of the Accused’s witnesses. The Chamber is mindful of both necessary protections for witnesses and the obligation to notify the Prosecution, as early as

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<sup>1</sup> *Rutaganda*, Appeal Judgement, 26 May 2003, para. 241.

<sup>2</sup> *Kayishema and Ruzindana* Appeal Judgement, 1 June 2001, para. 111.

reasonably practicable, of information relevant to the defence of alibi, in the interests of fair proceedings. Once the Chamber receives confirming information from the Registry's Witnesses and Victims Support Section, that protective measures are in place, then the information required pursuant to Rule 67 (A) (iii) (a) should be disclosed.

**FOR THE FOREGOING REASONS, THE TRIAL CHAMBER**

**URGES** the Defence to disclose to the Prosecution as soon as reasonably practicable the names of addresses of witnesses and any other evidence upon which the Accused intends to rely to establish the defence of alibi, in accordance with Rule 67(A)(ii)(a) of the Rules.

Arusha, 7 July 2005



Emile Francis Short

Judge

[Seal of the Tribunal]