



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
07-07-2005
(21547-21543)

21547
OR

Or: ENG

TRIAL CHAMBER II

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

2005 JUL 15 3:24
Adama Dieng
07-07-2005

**DECISION ON PROSECUTOR'S CONSOLIDATED CORRIGENDUM TO
PROSECUTOR'S RESPONSE TO DEFENCE MOTIONS FOR PROTECTION
OF DEFENCE WITNESSES AND REQUEST FOR RECONSIDERATION OF
DECISION ON PROSPER MUGIRANEZA'S MOTION FOR PROTECTION OF
DEFENCE WITNESSES**

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

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;

SEISED of the “Prosecutor’s Consolidated Corrigendum To Prosecutor’s Response to Defence Motions for Protection of Defence Witnesses and Request for Reconsideration of Decision on Prosper Mugiraneza’s Motion for Protection of Defence Witnesses”, filed on 15 June 2005 (the “Request for Reconsideration of Decision”);

CONSIDERING “Prosper Mugiraneza’s Reply to the Prosecutor’s Consolidated Corrigendum To Prosecutor’s Response to Defence Motions for Protection of Defence Witnesses and Request for Reconsideration of Decision on Prosper Mugiraneza’s Motion for Protection of Defence Witnesses, Dated 2 February 2005”, filed on 20 June 2005 the “Reply”);

HEREBY DECIDES the Request.

INTRODUCTION

1. On 15 June 2005, the Prosecution filed a document entitled “Prosecutor’s consolidated Corrigendum to Prosecutor’s Response to Defence Motions for Protection of Defence Witnesses and Request for Reconsideration of Decision on Prosper Mugiraneza’s Motion for Protection of Defence Witnesses, Dated 2 February 2005”. This document consists of two separate submissions: first, a corrigendum relating to the Prosecution’s Response to witness protective measures requested by the Defence for Casimir Bizimungu, Justin Mugenzi, and Jérôme Bicamumpaka; second, a submission for the Chamber to reconsider its Decision of 2 February 2005, in which it granted the protective measures in question to the Accused Prosper Mugiraneza.

(i) *The Prosecution’s Corrigendum to Its Response to Three Defence Motions*

2. In three Decisions issued on 27 June 2005,¹ the Chamber addressed the Prosecution’s revised arguments submitted in its corrigendum. In each Decision, the Chamber held that protective measures designed to restrict confidential witness information to designated members of the Prosecution team were appropriate. The Chamber also confirmed the same witness protection measures for the Accused Bizimungu, Mugenzi, and Bicamumpaka as it had granted to the Accused Mugiraneza in its Decision of 2 February 2005.

¹*Bizimungu et al.*: Decision on Jerome Bicamumpaka’s Motion for Protection of Defence Witnesses, 27 June 2005; Decision on Casimir Bizimungu’s Motion for Protection of Defence Witnesses, 27 June 2005; Decision on Justin Muenzi’s Confidential Motion for Protection of Defence Witnesses, 27 June 2005.

(ii) The Prosecution's Request for Reconsideration of Protective Measures Ordered by the Chamber in Its Decision of 2 February 2005

3. The Prosecution requests that the Chamber reconsider Provisions (e) and (f) of Paragraph 15, in its Decision of 2 February 2005, which restrict information about witnesses' identities to designated members of a particular Prosecution team.
4. Characterizing the Office of the Prosecutor (the "OTP") as a single and indivisible unit, "within which information may flow without restriction", the Prosecution submits that the measures in question are contrary to the nature of the OTP. The Prosecution further submits that these measures impede the discharge of the OTP's duties to investigate, to prosecute, and to ensure its disclosure obligations, pursuant to Rule 68 of the Rules.

The Defence Reply

5. The Mugiraneza Defence submits that the restriction of confidential information to the immediate Prosecution team is necessary to ensure the protection of Defence witnesses. The Defence also asserts that witnesses testifying on behalf of the Accused should be afforded the same level of protection as Prosecution witnesses, for whom the Chamber has ordered measures to restrict information to an individual Defence team.

DELIBERATIONS

6. While the Chamber expresses serious concern about the substantial filing delay, it will consider the Prosecution's submissions, in the interests of justice.

(iii) Standard of Review of the 2 February 2005 Decision

7. A Chamber has inherent jurisdiction, to be exercised at its discretion, to reverse or to revise a previous decision (a) where new material circumstances have arisen since the decision was issued, or (b) where the decision was erroneous and has caused prejudice or injustice to a Party.² Given that the Prosecution has not demonstrated any new material circumstances in the present case, the single issue before the Chamber is whether its Decision of 2 February 2005 was erroneous and, if so, whether it has caused prejudice or injustice to the Prosecution.

(iv) Substance of the Motion

8. The Prosecution challenges the witness protection measures set out in Paragraph 15 (e) and (f) of the Chamber's Decision of 2 February 2005. The first of the two measures prohibits the Prosecution from sharing, directly or indirectly, any information which could lead to the identification of a potential Defence witness with any person other than the members of the immediate Prosecution team. The

² *Mucic et al.*, Judgement and Sentence on Appeal (AC), 8 April 2003, para. 49; *Bagosora et al.*, Decision on Motion to Harmonize and Amend Witness Protection Orders, 1 June 2005, para. 3.

second measure requires the Prosecution to designate all such members of the immediate Prosecution team, to inform the Chamber in writing of any change in the composition of that team, and to ensure remission of all relevant information from any member departing from that team.

9. The Prosecution provides no adequate explanation to support its argument that the measures in issue are “untenable, impracticable, unnecessary, and incapable of being implemented”. Nor does the Prosecution show how it has suffered any prejudice or injustice as a consequence of these measures, which have commonly been ordered by the Tribunal for both Prosecution and Defence witnesses.
10. The Prosecution also asserts that the protection measures in question interfere with the discharge of its functions of disclosure, investigation, and prosecution. The Chamber is not persuaded by these arguments and recalls the recent Decision in *Bagasora et al.*, in which Trial Chamber I held that “[n]either the general duty to investigate crimes nor professional collegiality can supersede the specific obligations of a witness protection order, which is itself authorized under Article 21 of the Statute”.³ The Chamber adopts this reasoning and considers that the measures in issue are designed to afford the highest level of protection to prospective witnesses who might otherwise be subject to intimidation or justifiable fear of intimidation.
11. The protection of witnesses amounts to a fundamental duty of the Tribunal, given expression by Article 21 of the Statute. The two disputed measures are designed, in conjunction with others, to restrict the dissemination of witness’ identities. The purpose for so doing is to diminish the risk of intentional or inadvertent disclosure of sensitive and confidential information. The essential consideration is whether the measures in question strike an appropriate balance between affording security to witnesses and enabling the exercise of the Prosecution’s functions. The Chamber considers that these measures are necessary and proportionate to the objectives that they serve.
12. The Chamber considers that its Decision of 2 February 2005 was not erroneous. Accordingly, the protection measures restricting confidential witness information to designated members of a particular Prosecution team stand.

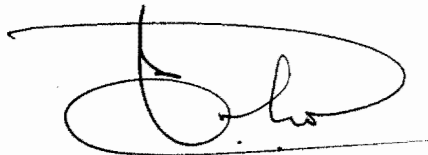
³ *Bagasora et al.*, Decision on Motion to Harmonize and Amend Witness Protection Orders, 1 June 2005, para. 6.

21543

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

DENIES the Prosecution Request for Reconsideration of the Decision on Prosper Mugiraneza's Motion for Protection of Defence Witnesses.

Arusha, 7 July 2005

A handwritten signature in black ink, appearing to read 'E. Short', written over a horizontal line.

Emile Francis Short

Judge

[Seal of the Tribunal]