



UNITED NATIONS
NATIONS UNIES

ICTR-90-50-T
(11-09-2006
(23371-23368)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

23371
HQ

OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

Registrar: Mr. Adama Dieng

Date: 11 September 2006

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ICTR

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**DECISION ON CASIMIR BIZIMUNGU'S CONFIDENTIAL MOTION
REQUESTING THE CHAMBER TO HEAR EXPERT WITNESS HELMUT
STRIZEK IN THE HAGUE OR ALTERNATIVELY TO AUTHORISE TESTIMONY
BY VIDEO-LINK**

Rules 54 and 90(A) of the Rules of Procedure and Evidence

Office of the Prosecutor:

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

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk 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**

23370

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA ("Tribunal"),

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

BEING SEIZED of "Requête Confidentielle de Casimir Bizimungu Visant à Demander à la Chambre de se Déplacer à la Haye pour Entendre le Témoin Expert Helmut Strizek ou Subsidiairement d'Entendre ce Témoin Expert par Voie de Vidéoconférence", filed on 1 June 2006 (the "Motion");

NOTING that the Prosecution did not file a Response;

NOW DECIDES the Motion solely on the basis of the briefs of the Parties, pursuant to Rule 73 (A) of the Rules of Procedure and Evidence (the "Rules").

INTRODUCTION

1. The Defence wishes to call Dr. Helmut Strizek as an expert witness in its case. It submits that Dr. Strizek has health issues that now prevent him from flying in aeroplanes. Thus, it is, at the present time, impossible for him to travel to Arusha. The Defence requests that either the Chamber travels to The Hague in order to hear the witness directly, or, alternatively, that the Chamber authorise the taking of Dr. Strizek's testimony by video-link.

DISCUSSION

2. Rule 90 (A) of the Rules state that witnesses shall, in principle, be heard directly by the Chambers. The seat of the Tribunal is in Arusha, and, under normal circumstances, witnesses travel to Arusha to give testimony.
3. From the confidential submissions filed by the Defence, which include a doctor's certificate attesting to Dr. Strizek's condition and advising against air travel, the Chamber accepts that it would be unwise to require him to fly to Arusha in order to testify.
4. The Chamber finds that health issues which prevent a witness from flying to Arusha are valid grounds for considering alternative methods for receiving testimony.
5. The Defence's preferred option is that the Chamber temporarily relocates from Arusha to The Hague in order to receive the testimony of Dr. Strizek directly. It submits that Rule 4 of the Rules permits a Chamber or Judge to exercise their functions away from the Tribunal if so authorized by the President in the interests of justice. Whilst the Chamber accepts that it is possible for such a measure to be granted under very exceptional circumstances, the Chamber understands that logistical and budgetary considerations seriously restrict this possibility as a viable option.¹
6. The Defence's alternative request is that the Chamber authorise the taking of his testimony by means of video-link. Although the Rules do not expressly provide for

¹ *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Decision on Request for Authorisation to Hold Trial Session Away from the Seat of the Tribunal, Office of the President, 12 May 2006.



taking testimony by video-link, this option is well developed in the jurisprudence of the Tribunal as a means for receiving the testimony of witnesses who are unable to travel to Arusha.² Indeed, the Chamber has already received witness testimony by means of video-link during the Prosecution phase of this trial.³ A Chamber may order that testimony be taken by means of video-link under Rule 54 of the Rules provided that it is in the interests of justice to do so. In making such an evaluation, the Chamber must weigh the importance of the testimony, the witness's inability or unwillingness to attend, and whether a good reason has been adduced for that inability or unwillingness.⁴

7. The Defence submits that Dr. Strizek is an important witness in its case, and summarises the witness' anticipated testimony. The Chamber is unaware of the position of the Prosecution, as it has not filed a Response. Whilst the Chamber reserves its ruling on the expertise of this witness and also the relevance of his proposed testimony, based upon the submissions of the Defence, and the fact that Dr. Strizek has twice before testified before the Tribunal as an expert witness, the Chamber is prepared to accept that Dr. Strizek may have important testimony to give before the Chamber in this case.
8. The Chamber, being satisfied that Dr. Strizek is unable to travel to Arusha to give testimony directly before the Chamber and that a good reason has been advanced by the Defence, is prepared as an exceptional measure to authorise the taking of his testimony by video-link.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion in the following terms only:

AUTHORISES the taking of Dr. Helmut Strizek's testimony by video-link;

REQUESTS the Registry to make arrangements for the testimony of proposed Expert Witness Dr. Helmut Strizek via video-link.

Arusha, 11 September 2006

² See, *inter alia*, *Prosecutor v. Simba*, Decision Authorising the Taking of Evidence of Witnesses IMG, ISG and BJK1 by Video-Link (TC), 4 February 2005; *Prosecutor v. Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004; *Prosecutor v. Karemera et al.*, Decision on the Prosecutor's Motion for Special Protective Measures for Witnesses G and T (TC), 14 September 2005;

³ For example Witness D, a protected witness for the Prosecution, testified by way of videoconference due to his extraordinary vulnerability.

⁴ *Bagosora et al.*, Decision on Prosecution Request for Testimony of Witness BT via Video-Link (TC), 8 October 2004, para. 6; *The Prosecutor v. Aloys Simba*, Decision Authorizing the Taking of the Evidence of Witnesses IMG, ISG, and BJK1 by Video-Link (TC), 4 February 2005, para. 4; *Bagosora et al.*, Decision on Testimony by Video-Conference (TC), 20 December 2004, para. 4.



P.R.
Khalida Rachid Khan
Presiding Judge

[Signature]
Les Gaciga Muthoga
Judge

[Signature]
Emile Francis Short
Judge



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