



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T
07-12-2006

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Muh

(23506-23503)

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 7 December 2006

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

Case No. ICTR-99-50-T

JUDICIAL RECORDS/ARCHIVES
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ICTR

DECISION ON CASIMIR BIZIMUNGU'S EXTREMELY URGENT AND
CONFIDENTIAL MOTION TO HAVE WITNESS WDK TESTIFY VIA 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
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Mr. Elvis Bazawule
Mr. Shyamlal Rajapaksa
Mr. Olivier de Shutter
Mr. William Muubiru

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

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 “Trial Chamber”);

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BEING SEIZED of the “*Requête confidentielle en extrême urgence du Dr Casimir Bizimungu en vue d'entendre le témoin WDK par voie de vidéoconférence*”, filed on 3 November 2006 (the “Motion”);

CONSIDERING the “Prosecution response to *Requête confidentielle en extrême urgence du Dr. Casimir Bizimungu en vue d'entendre le témoin WDK par voie de vidéoconférence*”, dated 8 November 2006 and filed on 9 November 2006;

INTRODUCTION

1. Defence Witness WDK resides in a European country and refuses to travel to Arusha to testify. The Defence asks that she be allowed to testify via video-link from The Hague or another suitable destination. It bases its request on Rules 54 and 71 of the Rules of Procedure and Evidence (“the Rules”), arguing that the interests of justice and the rights of the Accused justify hearing her testimony in this manner.
2. The Prosecution asserts that he would not oppose the request provided that the Prosecution’s right to cross-examination is guaranteed.

DISCUSSION

3. Rule 90 (A) of the Rules states 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. Although the Rules do not expressly provide for 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 or unwilling to travel to Arusha. A Chamber may authorize testimonies by video-link under Rule 54 of the Rules where it is in the interests of justice, based on a consideration of the importance of the testimony, the inability or unwillingness of the witness to attend and, whether a good reason has been adduced for that inability or unwillingness.¹ Where the witness is unwilling to attend, his refusal must be genuine and well-founded, giving the Chamber reason to believe that the testimony would not be heard unless the video-link is authorized.²

Importance of the testimony

4. The Defence intends to call Witness WDK as an alibi witness for the Accused. It submits that she is an important witness who is expected to testify that she saw the Accused in Kinshasa, D.R.C., several times between April and July 1994. The

¹ *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link, 8 October 2004 ; *Tadic*, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link (TC), 25 June 1996.

² *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Ntabakuze Motion to Allow Witness DK 52 to Give Testimony by Video-conference, 22 February 2005, para. 4.



Chamber accepts that Witness WDK may have important testimony to give in this case.

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Inability or Unwillingness to Attend

5. The Defence asserts that Witness WDK is a single-parent who is responsible for taking care of her five-year old son. The only other person who can care for the child is the witness' own mother, who normally lives with the witness. However, the witness' mother has been hospitalized for several months and is currently unable to perform this role. The witness is the only support available to her young son and her sick mother.
6. The Chamber notes the jurisprudence cited by the Defence in support of its application. These decisions allowed witnesses to testify via video-link due to their particular family obligations- they were nursing mothers with young children- which prevented them from travelling to The Hague to give testimony before the ICTY.
7. The Defence further submits that an additional reason for allowing testimony via video-link in this case is that the Witness is her family's only source of income, and her employment status does not allow her to leave work for more than a day. To support its argument, the Defence cites a decision from the *Karera* case in which the Chamber considered that:

practical inconveniences related to family or work, do not in themselves justify testimonies through video-link. However a loss of the source of income of a refugee who supports a family is more than a "practical inconvenience". Furthermore, the concerns of the witness are based on his own past experience. The Chamber accepts his reason for refusing to travel to Arusha.³

8. The Defence has established that the particular family obligations of Witness WDK prevent her from travelling to Arusha. Thus, a good reason has been adduced for the inability of Witness WDK to attend.
9. The Prosecution's right to cross-examine the witness is guaranteed, and the Chamber finds that receiving Witness WDK's testimony via video-link will not prevent effective cross-examination by the Prosecution.
10. Accordingly, the Chamber, in the interests of justice, is prepared to authorize the taking of her testimony by video-link from The Hague or other such suitable venue that the Tribunal is able to arrange.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion in the following terms only:

AUTHORIZES the taking of Witness WDK's testimony by video-link from The Hague or other such suitable venue that the Tribunal is able to arrange;

³ *The Prosecutor v. Karera*, Case No. ICTR-01-74-T, Decision on Testimony by Video-link, 29 June 2006, para. 6.



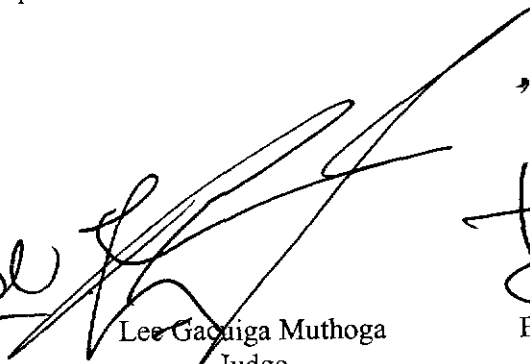
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REQUESTS the Registry, in consultation with the parties, to make arrangements for the testimony of proposed Witness WDK via video-link.

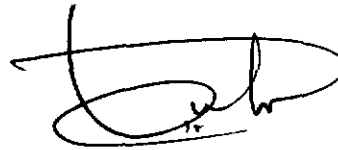
Arusha, 7 December 2006



Khalida Rachid Khan
Presiding Judge



Lee Gaciga Muthoga
Judge



Emile Francis Short
Judge

[Seal of the Tribunal]

