

ICTR-99-50-T
28-05-2007
(24125-24125)

24125
R



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

UNITED NATIONS
NATIONS UNIES

OR:
ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 28 May 2007

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

JUDICIAL RECORDS ARCHIVE
RECEIVED

2007 MAY 28 1P 3:33

Case No. ICTR-99-50-T

**DECISION ON JÉRÔME-CLÉMENT BICAMUMPAKA'S CONFIDENTIAL URGENT
MOTION FOR AN ORDER APPLYING RULE 70 TO SPECIFIC INFORMATION TO
BE PROVIDED TO THE DEFENCE BY THE UNITED STATES GOVERNMENT**

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyanlal Rajapaksa
Mr. Olivier De Schutter
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**

INTRODUCTION

1. The Defence for Jérôme-Clément Bicamumpaka requests the Trial Chamber to issue an order that the provisions of Rule 70 of the Rules of Procedure and Evidence shall apply *mutatis mutandis* to information provided by the Government of the United States of America (the "U.S. Government"). The Defence submits that the U.S. Government is prepared to provide information on a confidential basis, subject to an order from the Trial Chamber expressly providing that the provisions of Rule 70 will apply to any information provided.¹
2. The Prosecution does not oppose the motion.²

DISCUSSION

3. The Defence argues based on previous ICTY and ICTR jurisprudence that Rule 70 should apply not only to applications of the Prosecution but also to applications of the Defence.³ The Defence further argues that an order applying the protections of Rule 70 to information obtained from the U.S. Government is necessary in that the information is critical to Mr. Bicamumpaka's defence and is only available if the U.S. Government is assured that Rule 70 will apply.⁴
4. Rule 70 (B) states that when a party possesses confidential information used for the sole purpose of generating new evidence, "that initial information and its origin shall not be disclosed ... without the consent of the person or entity providing the initial information." In interpreting Rule 70 this Chamber has stated that "although the ICTR Rule 70 is limited to applications by the Prosecutor, broadening the ambit of that Rule to include applications by the Defence would serve to foster equality of arms between the Parties, is consistent with the Rule's rationale, and is, therefore, 'consonant with the spirit of the Statute'."⁵
5. At this stage of the proceedings, the Chamber is not required to make an assessment as to the relevance or probative value of the information being sought.

¹ "Confidential Urgent Motion for an Order Applying Rule 70 to Specific Information to be Provided to the Defence by the United States Government", filed 16 May 2007 (the "Defence Request").

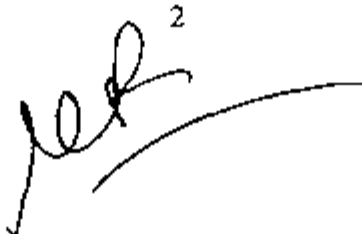
² "Prosecutor's Response to Jérôme Bicamumpaka's Confidential Urgent Motion for an Order Applying Rule 70 to Specific Information to be Provided to the Defence by the United States Government", filed 21 May 2007.

³ Defence Request, paras 5-6.

⁴ Defence Request, paras 7-8.

⁵ *Bizimungu et al.*, Decision on Casimir Bizimungu's Very Urgent Motion for an Order Applying Rule 70 to Specific Information to be Provided to the Defense by the United States Government (TC), 11 December 2006, para. 10 (applying Rule 89(B) of the Rules of Procedure and Evidence).

2




24123

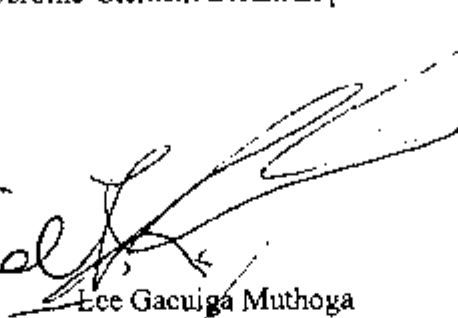
FOR THESE REASONS, the Chamber

GRANTS the Defence Motion;

ORDERS that the provisions of Rule 70 shall apply *mutatis mutandis* to information obtained by the Defence for Jérôme-Clément Bicamunpaka from the Government of the United States.

Arusha, 28 May 2007


Khalida Rachid Khan
Presiding Judge


Eze Gacumba Muthoga
Judge


Emile Francis Short
Judge

