



UNITED NATIONS
INTERNATIONAL

ICTR-00-56-T
26-10-2007
(64513-64511)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

64513
PM

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
Judge Taghrid Hikmet
Judge Scon Ki Park

Registrar: Mr Adama Dieng

Date: 26 October 2007

The PROSECUTOR

v.

**Augustin NDINDILYIMANA
Augustin BIZIMUNGU
François-Xavier NZUWONEMEYE
Innocent SAGAHUTU**

Case No. ICTR-00-56-T

2007 OCT 26 9:23
M

**DECISION ON BIZIMUNGU'S EXTREMELY URGENT MOTION TO CONTACT
AND MEET WITH PROSECUTION WITNESS GAP**
(Articles 54 and 75 of the Rules of Procedure and Evidence)

Office of the Prosecutor:

Mr Alphonse Van
Mr Moussa Sefou
Mr Segun Jegede
Mr Lloyd Strickland
Mr Abubacarr Tambadou
Ms Felistas Mushi
Ms Faria Rekkas
Ms Maritze Keefer

Counsel for the Defence:

Mr Gilles St-Laurent and Mr Ronnie MacDonald for Augustin Bizimungu
Mr Christopher Black and Mr Vincent Lurquin for Augustin Ndingiliyimana
Mr Charles Taku and Ms Beth Lyons for François-Xavier Nzuwonemeye
Mr Fabien Segarwa and Mr Seydou Doumbia for Innocent Sagahutu

INTRODUCTION

1. On 19 March 2004 the Chamber rendered a decision on a Prosecution Motion to change and extend the protective measures accorded to victims and witnesses. The Chamber held that the Defence must receive authorization from the Chamber and consent from the protected witness before it could enter into contact with a protected Prosecution Witness.¹

2. Witness GAP testified for the Prosecution which closed its case on 7 December 2006. The Defence for Bizimungu (the Defence) started its case on 16 April 2007. On 2 October 2007, the Defence filed the present motion requesting the Chamber's permission to contact Prosecution Witness GAP.² The basis for the request stems from information provided by Peter Robinson, Lead Counsel for Joseph Nzirorera, who is an Accused in another case before the Tribunal. Mr. Robinson gave affidavits, annexed to the Defence motion, stating that he met with Witness GAP who supposedly admitted to having falsely accused Nzirorera of holding meetings with authorities at Nzirorera's mother's house.³ Mr. Robinson added that GAP would be willing to meet Counsel for Bizimungu.⁴ The Prosecution opposes the Motion.⁵

DELIBERATIONS

3. Each party has the right to interview a potential witness.⁶ The Defence in particular may have a legitimate interest in interviewing a Prosecution witness in order to properly prepare its case.⁷ Requests to meet a witness of the opposing party are generally made before the witness's testimony in court.⁸ In assessing the request, the Chamber considers whether the moving party has articulated good reasons, which are not necessarily limited to the need to prepare an effective cross-examination. The right to interview a witness is not however, without limitation.⁹ The Chamber must, in particular, ensure that there is no interference with the course of justice.

4. The Chamber notes that paragraph 22 of the Indictment¹⁰ refers to Nzirorera as one of the alleged co-conspirators to commit genocide. Paragraph 29 alleges that he held meetings at his house with Bizimungu, Kajelijeli and others for the purpose of devising a strategy to fight the Tutsis.

¹ *Décision sur la Requête du Procureur aux fins de modification et d'extension des mesures de protection des victimes et des témoins*, 19 March 2004 para. (f).

² "Requête en extrême urgence de la Défense du Général Augustin Bizimungu afin de contacter et de rencontrer le Témoin GAP".

³ *Ibid*

⁴ Annex I of the Motion.

⁵ "Réponse du Procureur à la "Requête en extrême urgence de la Défense du Général Augustin Bizimungu afin de contacter et de rencontrer le Témoin GAP".

⁶ *Prosecutor v. Mile Mrksic*, Case No. IT-95-13/1-AR73, Decision on Defence Interlocutory Appeal on Communication with Potential Witnesses of the Opposite Party (AC), 30 July 2003.

⁷ *Prosecutor v. Sefer Halilovic*, IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004, para. 14.

⁸ *Prosecutor v. Ndingiyimana et al.*, Decision on Sagahutu's Motion for Reconsideration of 19 March 2004 Decision on Disclosure of Prosecution Materials, for Leave to Contact a Prosecution Witness, and for Access to Testimony of Protected Witnesses in the Military I Case (TC), 3 November 2004, paras. 21-23; *Prosecutor v. Karemera et al.*, ICTR-98-44 ICTR-98-44-T, Decision on Reconsideration of protective measures for Prosecution Witnesses (Articles 19 and 20 of the Statute, Rules 33, 34, 54 and 75 of the Rules of Procedure and Evidence), paras. 3-11.

⁹ *Prosecutor v. Mile Mrksic*, Case No. IT-95-13/1-AR73, Decision on Defence Interlocutory Appeal on Communication with Potential Witnesses of the Opposite Party (AC), 30 July 2003.


¹⁰ Amended Indictment of 23 August 2004.


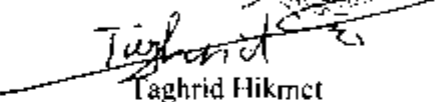
5. In view of the relevant charges against the Accused, the Chamber finds that the information contained in the affidavits constitute a good reason to grant the Defence request. However, due to the sensitivity of the issue that will be raised at the proposed meeting and its possible implications for the parties, and to curtail possible allegations of tampering with the witness, the Chamber will authorize the meeting in the presence of a representative of the Office of the Prosecution.

FOR THE ABOVE MENTIONED REASONS, THE CHAMBER GRANTS the Motion:

DIRECTS the Witness and Victims Support Section (WVSS) to organise a meeting between the Bizimungu Defence and Witness GAP, in the presence of a representative of the Prosecution.

Arusha, 26 October 2007


Asoka de Silva
Presiding Judge



Taghrid Hikmet
Judge


Seon Ki Park
Judge

[Seal of the Tribunal]