



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

24530
KWS

OR: ENG

TRIAL CHAMBER II ICTR-99-50-T

05-12-2007

(24530-24527)

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

Registrar: Mr. Adama Dieng

Date: 5 December 2007

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

Case No. ICTR-99-50-T

5 DEC 2007 12:23
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**DECISION ON JÉRÔME-CLÉMENT BICAMUMPAKA'S MOTIONS TO MEET
WITH PROSECUTION WITNESSES GFA AND GKB**

Rules 54 and 75 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. George William Mugwanya
Mr. Shyamlal Rajapaksa

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. Michel Croteau and Mr. Philippe Larochelle for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

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INTRODUCTION

1. By two Motions¹ dated 19 and 27 September 2007, respectively, the Defence for Jérôme-Clément Bicamumpaka seeks the Chamber's permission to contact and to meet with Prosecution Witnesses GFA and GKB. Both are protected witnesses within the meaning of the Tribunal's Statute and Rules of Evidence and Procedure, according to the Trial Chamber's Decision of 12 July 2000.² Pursuant to protective measure 3(i) of that Decision, the Defence is required to make a written request to the Chamber to contact any protected Prosecution witness.

2. Annexed to the Motion concerning Witness GFA is a letter purportedly signed by the Witness stating that he would like to meet with the Defence for Bicamumpaka. A second annexure to that Motion is an affidavit signed by the Defence investigator for Bicamumpaka explaining the circumstances under which Witness GFA's letter was obtained.

3. Annexed to the Motion concerning Witness GKB is "Joseph Nzirorera's Notice of Discovery of False Testimony", dated 25 September 2007, filed by the Defence for Joseph Nzirorera before this Trial Chamber. In that annexure, Mr. Peter Robinson draws to the attention of the *Bizimungu et al* Trial Chamber, the possibility that Prosecution Witness GKB has given false testimony before the *Bizimungu et al* Trial Chamber. The Notice filed by Mr. Robinson claims that Witness GKB met with Counsel Robinson on a number of occasions at Ruhengeri prison during which meetings he told Mr. Robinson that he had given false testimony before this Trial Chamber. In relation to the Defence filings about Witness GKB, there is no material purportedly from the witness himself to support this, though Counsel Robinson explains why this is the case.

4. The Prosecution raises no objection to the Defence's request to contact and meet Witness GKB,³ but requests that a representative of WVSS and of the Prosecutor be present at any such meeting. In relation to the Defence request regarding Witness GFA, the Prosecution requests further particulars of the Defence's intended meeting.⁴ The Defence replies that the provision of any further particulars would be premature, if and until its application is granted.⁵

¹ Request by Defendant Bicamumpaka to Contact and Meet with Prosecution Witness GFA, filed 19 September 2007; and Request by Defendant Bicamumpaka to Contact and Meet with Prosecution Witness GKB, filed 27 September 2007.

² *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC), 12 July 2000.

³ Prosecutor's Response to Jérôme Bicamumpaka's Request to Contact and Meet with Prosecution Witness GKB, filed 1 October 2007.

⁴ Prosecutor's Response to Jérôme Bicamumpaka's Request to Contact and Meet with Prosecution Witness GFA, filed 20 September 2007.

⁵ Reply to Prosecutor's Response to Request by Defendant Bicamumpaka to Contact and Meet with Prosecution Witness GFA, filed 25 September 2007.



DELIBERATIONS

5. The jurisprudence establishes the right of each party to interview a potential witness.⁶ Particularly, it recognises that the Defence may have a legitimate interest in interviewing a Prosecution witness in order to prepare its case.⁷ In assessing the Defence's request, the Chamber must consider whether the moving party has articulated good reason.⁸ When considering requests by the Defence to meet with Prosecution witnesses, the Chamber must ensure that there is no interference with the course of justice.⁹

6. The Chamber considers it to be in the interests of justice to grant the Defence Motion to meet with Prosecution Witness GKB. In relation to this Motion, the Chamber notes, firstly, that the Prosecution does not object to the Defence meeting with Witness GKB, provided certain requirements are met; secondly, that Witness GKB has given certain testimony against Mr Bicamumpaka which could be construed as incriminatory by a reasonable trier of fact; and thirdly, that there is some material before the Chamber – in the form of the allegations placed before it by Mr. Robinson – which amounts to good reason for the Defence to meet with the witness.

7. With respect to Prosecution Witness GFA, the Chamber is also satisfied that the Defence request to meet with the witness is warranted. In reaching this conclusion the Chamber has had regard to the material annexed to the Motion. Whilst the Chamber cannot find on the basis of that material that the letter is actually signed by GFA, the Chamber is satisfied that it *prima facie* gives rise to a good reason for the Defence to meet with the witness in order to prepare its case.

8. The Chamber notes the Prosecution's objection to the Defence meeting with Prosecution Witness GFA. The Chamber also notes that both witnesses are protected prosecution witnesses within the meaning of the Statute and Rules of the Tribunal. However, the Chamber considers that the Prosecution's concerns with respect to each witness will be overcome by the involvement of WVSS in facilitating both meetings. As such, the Chamber considers that WVSS should approach each witness to confirm that they still wish to meet with the Defence for Bicamumpaka and that, if so, arrangements can be made, by WVSS, for the meetings to take place in the presence of a representative of both the Prosecution and WVSS. By ordering the taking of such measures, the Chamber is satisfied that it can ensure that there is no interference with the course of justice.

FOR THE FOREGOING REASONS, THE CHAMBER

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; *Prosecutor v. Augustin Ndiindiliyimana et al.*, Case No. ICTR-00-56-T, Decision on Bizimungu's Extremely Urgent Motion to Contact and Meet with Prosecution Witness GAP (TC), 26 October 2007, para. 3.

⁷ *Prosecutor v. Sefer Halilovic*, IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004, para. 14, *Ndiindiliyimana et al.*, Decision on Bizimungu's Extremely Urgent Motion to Contact and Meet with Prosecution Witness GAP (TC), 26 October 2007, para. 3.

⁸ *Ndiindiliyimana et al.*, Decision on Bizimungu's Extremely Urgent Motion to Contact and Meet with Prosecution Witness GAP (TC), 26 October 2007, para. 3.

⁹ *Id.*




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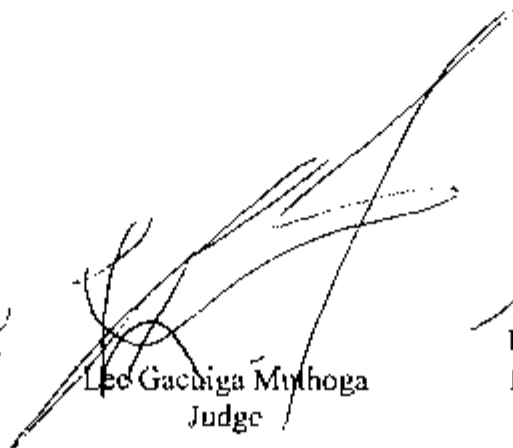
GRANTS both Defence Motions;

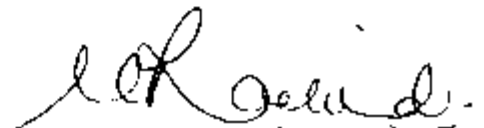
DIRECTS the Witness and Victims Support Section (WVSS) to approach each of Prosecution Witness GFA and GKB to ascertain their ongoing willingness to meet with the Defence for Jérôme-Clément Bicamumpaka; and, in the case that either or both of those witnesses are still willing to do so, to arrange a meeting between the Bicamumpaka Defence and the consenting witness(es).

ORDERS that any meeting which takes place pursuant to this Decision, do so in the presence of both a representative of the Prosecution and a representative of WVSS.

Arusha, 5 December 2007


Khalida Rachid Khan
Presiding Judge


Leo Gachiga Muthoga
Judge


For and on behalf of
Emile Francis Short
Judge

[Seal of the Tribunal]

