



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 23 January 2008

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

Case No. ICTR-99-50-T

**DECISION ON MOTION OF JÉRÔME-CLÉMENT BICAMUMPAKA FOR THE
TRANSFER OF DETAINED DEFENCE WITNESS LD-1 FROM RWANDA**

Rules 54 and 90 bis 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**

INTRODUCTION

1. The Defence for Jérôme-Clément Bicamumpaka requests an order pursuant to Rules 54 and 90*bis* of the Rules of Procedure and Evidence (“Rules”), for the transfer to the Tribunal of Defence Witness LD-1 (“Witness”), who is currently detained in Rwanda.¹
2. The Defence requests that the Witness be brought to Arusha for the beginning of the next session (28 January 2008) for a period of three weeks and anticipates that the Witness’ testimony will last half a day.²
3. The Prosecution did not respond to the Motion.

DISCUSSION

4. Rule 90*bis* (A) of the Rules states that “any detained person whose personal appearance as a witness has been requested by the Tribunal shall be transferred temporarily to the Detention Unit of the Tribunal, conditional on his return within the period decided by the Tribunal.” According to Rule 90*bis* (B), a transfer order shall *only* be issued after prior verification that:
 - (i) The presence of the detained witness is not required for any criminal proceedings in progress in the territory of the requested State during the period the witness is required by the Tribunal; and
 - (ii) Transfer of the witness does not extend the period of his detention as foreseen by the requested State.
5. It is the usual practice before this Tribunal that the necessary verification mandated by Rule 90*bis* (B) is sought by the Registry, via the appropriate diplomatic channels, upon the initiation of the party seeking the appearance of the witness concerned. Annexures A and B to the Defence Motion disclose that this practice has been previously followed by the Defence in relation to Witness LD-1 and that the Rwandan authorities have addressed the question of the Witness’ availability with respect to the last trial session.³ However, according to the filings, no inquiries appear to have been made by the Defence in relation to the trial session scheduled to commence on 28 January 2008.
6. In this instance, it is the Defence’s request that the Chamber issue an order pursuant to Rule 90*bis* (A) which would operate on the condition that the requirements of

¹ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, “Motion From Defendant Bicamumpaka for the Transfer of Detained Defence Witness LD-1 from Rwanda”, dated 18 December 2007 (“Motion”).

² *Ibid.*, para. 4

³ *Ibid.*, para. 9 and Annexes “A” and “B”.

Rule 90bis (B) have been met, and upon verification thereof by the Registry. In support of its application, the Defence relies upon a Trial Chamber decision in the case of *Prosecutor v Simeon Nchamihigo*⁴ (“*Nchamihigo*”), in which the Chamber granted a transfer order subject to confirmation from the Rwandan authorities that the conditions of Rule 90bis (B) had been satisfied.⁵ Furthermore, the Defence considers that such an approach will minimise any delay which would otherwise be occasioned by following the usual practice.

7. The Chamber is not prepared to grant the order in the terms sought by the Defence. First, the Chamber notes that, in accordance with the plain meaning of Rule 90bis (B), the Chamber is precluded from *issuing* a transfer order until the matters outlined in that Rule have been verified. Second, the Chamber considers that the facts in the case of *Nchamihigo* are distinguishable from those in the instant case. In *Nchamihigo*, the Defence addressed a letter to the Rwandan Minister of Justice and received a communication, via the Witness and Victims Support Section, from the Prosecutor General stating that a response would soon be submitted. Despite subsequent Defence efforts, the General Prosecutor of the Republic of Rwanda failed to respond further.⁶ On that basis, the Chamber issued the order in the terms sought. In the present case, the Defence has made no efforts to ascertain the availability of the Witness for the trial session commencing 28 January 2007. Issuing an order in the terms sought in these circumstances would be contrary to the way in which Rule 90bis (B) is intended to operate, and counterproductive to the Tribunal’s diplomatic procedures. Third, the Chamber does not consider that the issuance of a Transfer Order in the terms sought will necessarily expedite matters since it would still be subject to verification by the Registry, through the usual diplomatic channels, that the requirements of Rule 90bis (B) of the Rules have been met. In this regard, the Chamber notes that verification could have been sought by the Defence adhering to the usual practice at the close of the last trial session on 9 November 2007. Upon receipt of the necessary verification, and proof by the Defence thereof, the Chamber is able to issue an order for the transfer of the Witness forthwith.

8. Nonetheless, the Chamber notes that this matter is now urgent. It therefore urges that upon receipt of a request by the Defence, the Registry take all necessary steps to obtain confirmation from the Rwandan authorities as to the Witness’ availability as soon as possible, and to expedite this process insofar as it is able.

FOR THESE REASONS, the CHAMBER

⁴ *Prosecutor v Simeon Nchamihigo* Case No. ICTR 2001-63-T, “Order for the Transfer of Defence Witness from Rwanda” dated 8 August 2007.

⁵ *Ibid*, para. 5

⁶ *Ibid*, para. 6

DENIES the Defence Motion.

Arusha, 23 January 2008

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

For and on behalf of
Emile Francis Short
Judge

[Seal of the Tribunal]