



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-99-50-T

24-01-2008

(25187-25183)

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 24 January 2008

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

Case No. ICTR-99-50-T

**URGENT DECISION ON PROSPER MUGIRANEZA'S MOTION FOR THE
TESTIMONY OF WITNESS RDG TO BE TAKEN BY DEPOSITION AND
CHAMBER'S ORDER FOR VIDEO-LINK TESTIMONY**

Rules 54 and 71 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 for **Prosper Mugiraneza**

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INTRODUCTION

1. The next trial session in this case is to commence on 28 January 2008 and to run, almost continuously, until the remaining evidence in the case has been heard.¹

2. By Motion of 7 December 2007,² Prosper Mugiraneza seeks an order from the Chamber that his witness - Witness RDG - be permitted to testify by way of deposition, pursuant to Rule 71 of the Tribunal's Rules of Procedure and Evidence (the "Rules").³ The Defence submits that the witness' ill health amounts to exceptional circumstances, as required before a Chamber can order the taking of a Rule 71 deposition.

3. The Defence proposes that the deposition be taken at the ICTR office in Kigali, Rwanda, and requests that it be taken as soon as possible.⁴ The Defence further submits that the witness could be deposed by videoconference, pursuant to sub-Rule 71 (D), if necessary.⁵ The Defence Motion does not attach any medical report concerning the witness, though it annexes a series of email exchanges between the Defence and the Witnesses and Victims Support Section ("WVSS") relating to Witness RDG's health status.⁶ It also attaches materials outlining the matters to which the witness will testify.⁷

¹ *Prosecutor v. Casimir Bizimungu et al*, Case No. ICTR-99-50-T, Scheduling Order (TC), 4 December 2007 (the "Order"). The Scheduling Order was made pursuant to Rule 54 of the Rules of Evidence and Procedure.

² "Prosper Mugiraneza's Emergency Motion to Depose Witness RDG Pursuant to Rule 71", filed on 7 December 2007.

³ Rule 71 of the Rules provides:

(A) At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial, and appoint, for that purpose, a Presiding Officer.

(B) The motion for the taking of a deposition shall be in writing and shall indicate the name and whereabouts of the witness whose deposition is sought, the date and place at which the deposition is to be taken, a statement of the matters on which the person is to be examined, and of the exceptional circumstances justifying the taking of the deposition.

(C) If the motion is granted, the party at whose request the deposition is to be taken shall give reasonable notice to the other party, who shall have the right to attend the taking of the deposition and cross-examine the witness.

(D) The deposition may also be given by means of a video-conference.

(E) The Presiding Officer shall ensure that the deposition is taken in accordance with the Rules and that a record is made of the deposition, including cross-examination and objections raised by either party for decision by the Trial Chamber. He shall transmit the record to the Trial Chamber.

⁴ Defence Motion, para. 5, "Mugiraneza requests that the deposition be scheduled as soon as possible, preferably before 25 December 2007..."

⁵ Defence Motion, para. 6.

⁶ Defence Motion, 'Exhibit A'. These emails are as follows:

(1) Email dated 1 December 2007 from Defence Legal Assistance, Cynthia Cline to Ms. Sylvie Becky of WVSS inquiring about the health of Witness RDG.

(2) Email dated 3 December 2007 from Ms. Sylvie Becky of WVSS to Mr. Paul Mnzava, WVSS Kigali, seeking update as to the health condition of the witness.

(3) Email dated 4 December 2007 from Mr. Paul Mnzava to Dr. Marie and Mr. Rwatagare seeking a report on the witness' health condition and seeking to know whether the witness could travel to Arusha in January or February 2008.

(4) Email dated 4 December 2007 from Dr. Marie Nyiraziraje to Mr. Paul Mnzava stating that Witness RDG cannot travel because his health status is not in good condition.

(5) Email dated 4 December 2007 from Mr. Paul Mnzava to Ms. Cynthia Cline and Ms. Sylvie Becky indicating that the witness is not fit to travel to Arusha due to his health condition.



4. The Prosecution, while not opposed to the possibility of taking RDG's testimony by deposition *per se*, submits that an affidavit or medical report by a qualified medical doctor is necessary to justify such an exceptional measure.⁸

DELIBERATIONS

5. Rule 90 (A) of the Rules provides that

[w]itnesses shall, in principle, be heard directly by the Chamber unless a Chamber has ordered that the witness be heard by means of a deposition as provided for in Rule 71.

6. Rule 71 (A) of the Rules provides the Chamber with the discretion to grant the taking of a deposition where exceptional circumstances exist and where it would be in the interests of justice.

7. The Defence submits that the Witness' ill health amounts to exceptional circumstances, though no medical report accompanies the Defence request. Further, the Defence submits that Witness RDG's health has deteriorated substantially and that the Witness had told members of the Mugiraneza defence team that he believes he is dying.⁹ The information from WVSS doctors contained in emails annexed to the Motion indicate that Witness RDG is medically unfit to travel to Arusha.¹⁰

8. Subsequent to the filing of the Defence Motion, the Chamber made a series of independent inquiries regarding Witness RDG's health status of ICTR medical personnel in Kigali, through the Registry. The responses to these inquiries indicate that the Witness has a serious health condition; that he is unfit to travel to Arusha; that his long-term prognosis is poor; and that he is able to testify by video-link facilities or deposition.¹¹

9. The Chamber is satisfied that the current health status of Witness RDG, as attested to by the Defence in its Motion, by the email correspondence annexed to the Defence Motion, and by the subsequent information received by the Chamber, would constitute exceptional circumstances for the purposes of Rule 71(A).¹²

(6) Email dated 5 December 2007 from Ms. Cynthia Cline to Ms. C. Duffy advising that a Motion for deposition will be filed immediately.

(7) Email dated 5 December 2007 from Defence investigator to Ms. Cynthia Cline advising that the witness is weak and that a Motion should be filed.

⁸ Defence Motion, 'Exhibit B'. This is in compliance with the requirements of Rule 71(B).

⁹ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosecutor's Response to Jérôme Bicamumpaka's Request to Contact and Meet with Prosecution Witness GKB", dated 1 October 2007.

¹⁰ Defence Motion, paras. 1(a) and (b).

¹¹ Defence Motion Annex A: Email dated 4 December 2007 from Dr. Marie Nyiraziraje to Mr. Paul Mnzava stating that Witness RDG cannot travel because his health status is not in good condition; Email dated 4 December 2007 from Mr. Paul Mnzava to Ms. Cynthia Cline and Ms. Sylvie Becky indicating that the witness is not fit to travel to Arusha due to his health condition.

¹² For reasons relating to Witness RDG's right to medical confidentiality, these communications will not be further detailed in this decision.

¹³ See eg. *Prosecutor v. Serugendo*, (Case No. ICTR-05-84-I), Decision on Urgent Motion for the Deposition of Joseph Serugendo (TC), 8 June 2006; *Simba*, Decision on Defence's Urgent Motion for a Deposition (TC), 11 March 2004, para. 7; *Nahimana, Ngeze and Barayagwiza*, Decision on the Defence Request to Hear the



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10. Rule 71(A) also requires the Chamber to be satisfied that it would be in the interests of justice to order that a deposition be taken for use at trial. In this regard, the Chamber has made a number of inquiries of the Court Management Section ("CMS") of the ICTR, in Arusha and Kigali, in order to ascertain the most expeditious means of disposing with this issue, in the light of Witness RDG's health status. The Chamber has been advised by CMS that videoconference facilities linking ICTR Arusha and Kigali can be made available for the purposes of Witness RDG's testimony during the week commencing 28 January 2008.

11. The Chamber recalls that it may authorise video-link testimony 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.¹³

12. Having regard to the following matters: (i) the preference under the Rules that witnesses be heard directly by the Chamber; (ii) the medical advice that Witness RDG's health condition renders him unable to travel to Arusha to testify, but able to attend upon ICTR, Kigali, for the purposes of taking a deposition (in writing or by Rule 71(D) videoconference), or for the purposes of testifying before the Tribunal by video-link; and (iii) the availability of videoconference facilities between the ICTR offices in Arusha and Kigali on 30 and 31 January 2008, the Chamber considers that it will be more expeditious to hear the Witness' testimony via video-link, rather than to order it to be taken by Rule 71 deposition. Therefore, whilst the Chamber has found that exceptional circumstances exist, the Chamber finds that it is in the interests of justice to hear the Witness' testimony by video-link. In this regard, the Chamber is satisfied that the Witness' testimony is important to Bicomupaka's defence,¹⁴ that he is unable to travel to Arusha, and that a good reason - namely, his current health status - has been adduced for that inability.

FOR THESE REASONS THE CHAMBER

DENIES the Defence Motion for the taking of testimony of Witness RDG by deposition, pursuant to Rule 71 of the Rules;

ORDERS that Witness RDG testify before the Chamber by video-link;

DIRECTS the Registry, in consultation with the parties and the Kigali Office of the International Criminal Tribunal for Rwanda, to make arrangements for the urgent testimony of Witness RDG via video-link from the ICTR, Kigali Office, on 30 and 31 January 2008.

Evidence of Witness Y by Deposition (TC), 10 April 2003, para. 8; *Muvunyi*, Decision on the Prosecutor's Extremely Urgent Motion for the Deposition of Witness QX (TC), 11 November 2003, para. 10; *Bagosora et al.*, Decision on Prosecutor's Motion for Deposition of Witness OW (TC), 5 December 2001, para. 12.

¹³ *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Confidential Motion from Mr. Bicomupaka to Allow Video-link Testimony for Witness CF-1, 23 January 2008, para. 3; *Decision on Casimir Bizimungu's Extremely Urgent and Confidential Motion to Have Witness WDK Testify via Video-Link (TC)*, 7 December 2006, para. 3.

¹⁴ The Chamber has reviewed and considered the materials in 'Exhibit B' to the Defence Motion, being a 'Personal Information Sheet' and 'Statement Summary'.

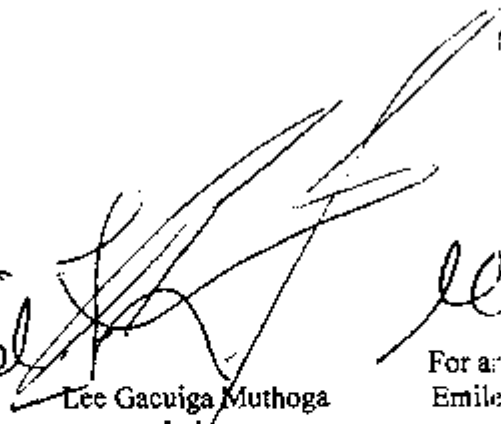


Arusha, 14 January 2008

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Khadija Rachid Khan
Presiding Judge



Lee Gacuga Muthoga
Judge



For and on behalf of
Emile Francis Short
Judge

