



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: Adama Dieng

Date: 29 January 2008

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

Case No. ICTR-99-50-T

**EXTREMELY URGENT DECISION RECONSIDERING TRIAL CHAMBER'S
DECISION OF 24 JANUARY 2008 AND ORDER FOR THE TESTIMONY OF
WITNESS RDG TO BE TAKEN BY DEPOSITION**

Rule 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**

INTRODUCTION

1. By Motion of 7 December 2007,¹ Prosper Mugiraneza sought an order from the Chamber for his witness - Witness RDG – to be permitted to testify by way of deposition, pursuant to Rule 71 of the Tribunal's Rules of Procedure and Evidence (the "Rules")² on the grounds of the Witness' ill health.

2. The Chamber rendered a decision in relation to this Motion on 24 January 2008,³ finding that the Witness' ill health did amount to 'exceptional circumstances' within the meaning of Rule 71 of the Rules. However, in determining whether or not granting a deposition would be in the interests of justice, the Chamber considered that since video-link facilities linking ICTR, Arusha, and ICTR, Kigali, could be made available almost immediately, and the Witness was medically able to travel to ICTR, Kigali, to testify, the Witness should testify by video-link, as preferred by the Rules.⁴ It ordered the video-link testimony to take place on 30 and 31 January 2008, and immediate steps were taken by the Registry to facilitate it.

3. Today (29 January 2008), the Chamber received a Medical Report from Dr. Marie Nyiraziraje of the Witnesses and Victims Support Section's ("WVSS") Medical Team in Kigali. In that Report, the doctor advised the Chamber that Witness RDG was now physically unable to travel to Kigali to testify by video-link. She also determined, however, that Witness RDG was medically able to give a deposition from his home; and that he was of sound mind, good memory, and able to express himself correctly.

¹ "Prosper Mugiraneza's Emergency Motion to Depose Witness RDG Pursuant to Rule 71", filed on 7 December 2007.

² 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.

³ *Prosecutor v. Bizimungu et al.*, 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 (TC), 24 January 2008 ("Original Decision").

⁴ 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.

DELIBERATIONS

4. Although the Rules do not explicitly provide for it, the Chamber has an inherent power to reconsider its own decisions.⁵ However, reconsideration is an exceptional measure that is available only in particular circumstances,⁶ including where new material circumstances have arisen since the decision was issued.⁷

5. The Chamber considers that Witness RDG's physical inability to travel from his home to Kigali to testify constitutes a new material circumstance requiring the Chamber to revisit its original Decision. The Chamber recalls that when it rendered its Decision, the interests of justice preferred that the Chamber grant video-link testimony for reasons of expediency. The Chamber also recalls that it found, in its original Decision, that Witness RDG's health status constituted exceptional circumstances for the purposes of Rule 71(A).⁸ It is clear from Dr. Marie Nyiraziraje's Report that these exceptional circumstances still exist. The Chamber now considers, therefore, that in light of these exceptional circumstances, and in the interests of justice, Witness RDG's testimony should be taken by Rule 71 deposition.

FOR THESE REASONS THE CHAMBER

REVOKES its Order of 24 January 2008 for Witness RDG to testify before the Chamber by video-link, and all other associated orders;

ORDERS that a deposition of the testimony of Witness RDG be taken, pursuant to Rule 71 of the Rules, on Thursday, 31 January 2008, or as soon as practicable thereafter, at the home of Witness RDG, for use at trial, and that both an audio and visual recording of the deposition be made, and placed under seal; and hereby

APPOINTS Mr. Constant Hometowu, of the Court Management Section of the International Criminal Tribunal of Rwanda, as Presiding Officer for this purpose;

DIRECTS the Registry, in consultation with the Parties and the Kigali Office of the International Criminal Tribunal for Rwanda, to make urgent arrangements for the deposition

⁵ *Prosecutor v. Casimir Bizimungu, et al.*, Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Motion in Reconsideration of the Trial Chamber's Decision dated February 8, 2007, in Relation to Condition (B) Requested by the United States Government (TC), 26 April 2007, para. 7 (citations omitted).

⁶ *Nyiramasuhuko et al.*, Decision on Pauline Nyiramasuhuko's Ex-Parte-Extremely Urgent Motion for Reconsideration of Trial Chamber II's Decision on Nyiramasuhuko's Strictly Confidential Ex-Parte-Under Seal-Motion for Additional Protective Measures for Defence Witness WBNM, dated 17 June 2005 or, Subsidiarily, on Nyiramasuhuko's Strictly Confidential Ex-Parte-Under Seal-Motion for Additional Protective Measures for Defence Witness WBNM (TC), 4 July 2005, para. 3, quoting *Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's "Decision on Prosecutor's Motion for Leave to Vary the Witness List Pursuant to Rule 73bis (E)" (TC), 15 June 2004, para. 7.

⁷ *Barayagwiza*, Decision (Prosecutor's Request for Review or Reconsideration) (AC), 31 March 2000, Separate Opinion of Judge Shahabuddeen, paras. 4-5; *Bagosora et al.*, Decision on Reconsideration of Order to Reduce Witness List and on Motion for Contempt for Violation of that Order (TC), 1 March 2004, para. 11; *Bagosora et al.*, Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001 (TC), 18 July 2003, para. 25.

⁸ Impugned Decision, para.9.

to take place, and to communicate the necessary details for the deposition to all concerned Parties.

REMINDS the Prosecution of its right, pursuant to Rule 71 (C) of the Rules, to attend the taking of the deposition and cross-examine the witness.

RECOGNISES the right of Prosper Mugiraneza's co-Accused to also attend the taking of the deposition and cross-examine the witness if they so wish.

Arusha, 29 January 2008

Khalida Rachid Khan
Presiding Judge

Lee Gacuiga Muthoga
Judge

Emile Francis Short
Judge

[Seal of the Tribunal]