



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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ICTR-99-50-T

12-02-2008

(25402-25400)
TRIAL CHAMBER II

OR: ENG

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

Registrar: Mr. Adama Dieng

Date: 12 February 2008

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

Case No. ICTR-99-50-T

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**DECISION ON JÉRÔME-CLÉMENT BICAMUMPAKA'S REQUEST
FOR A SUBPOENA**

Rule 54 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. During the most recent Status Conference held in this case on 28 January 2008, the Chamber ordered the Defence for Jérôme-Clément Bicomumpaka to file any outstanding application for subpoena by Friday, 1 February 2008. The Defence undertook to comply with this deadline.¹
2. On 5 February 2008, four days after the deadline set down by the Chamber, the Defence filed a Motion requesting the Chamber to issue a subpoena to compel the appearance of Witness LF-1.²
3. The Prosecution did not respond to the Motion.³

DISCUSSION

Preliminary Matter

4. The Defence failed to comply with the Chamber's Order to file any outstanding motion for subpoena by 1 February 2008. As a preliminary matter, therefore, the Chamber must determine whether or not it is in the interests of justice to consider the merits of the Motion, despite the fact that it was filed outside the time limit. Only if the Chamber is satisfied as such, will it go on to consider the merits of the Motion.
5. In its Motion of 5 February 2008, the Defence failed to address the fact that it had not complied with the time limit set down by the Chamber, which had been set down in consultation with the Defence. Furthermore, from the material contained in the Annexes to the Defence Motion, the Chamber notes that Witness LF-1's reticence to cooperate with the Tribunal has been known to the Defence since "summer 2007,"⁴ yet the Defence did not make final inquiries of the Witness until January 2008.⁵
6. During the Status Conference of 8 November 2007, held at the close of the last trial session in this case, the Bicomumpaka Defence was consulted in order for the Chamber to plan for, among other things, the remainder of Bicomumpaka's case. The Defence told the Chamber that a further two to three weeks of sitting time would be required for the completion of its case.⁶ The Chamber took these submissions into consideration when it issued its Scheduling Order of 4 December 2007, and made orders relating to the commencement date for the Defence case for the fourth co-Accused, Prosper Mugiraneza.⁷

¹ Oral Ruling delivered during Status Conference of 28 January 2008, T. (F) 28 January 2008, p. 9 (in Closed Session), see also Minutes of Proceedings (E), 28 January 2008.

² Confidential Request for Subpoena, filed 5 February 2008 ("Defence Motion"). The Defence Motion annexes two documents in support of the request for subpoena (Annex A and Annex B). Annex A is a Witness Statement, purportedly signed by Witness LF-1, on 17 July 2006. Annex B is an Affidavit from Co-Counsel Mr Philippe Laroche attesting to the unwillingness of Witness LF-1 to come to Arusha to testify.

³ Rule 73 (E) of the Rules stipulates that a responding party must file any reply within five (5) days of receipt of the motion.

⁴ Defence Motion, Appendix B, dated 4 February 2008.

⁵ Defence Motion, Appendix B, dated 4 February 2008.

⁶ T. (E) 8 November 2007, p.52.

⁷ Scheduling Order, dated 4 December 2007.



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7. Considering that the last trial session in this case ended on 7 November 2007, and the fact that the Defence had already been aware for some time that Witness LF-1 was reluctant to cooperate with the Tribunal, the Chamber is of the view that the Defence should have acted in a much more timely manner to ascertain the willingness, or otherwise, of the Witness to testify voluntarily, and to file any application for subpoena immediately thereafter, if necessary.

8. The Chamber also notes that, since the commencement of this session on 28 January 2008, more than half the sitting time has been lost due to the unavailability of Bicomumpaka Defence witnesses. While some of the issues giving rise to the unavailability of witnesses have been outside the control of the Bicomumpaka Defence, the Chamber considers that some valuable sitting time has been lost due to the failure of the Defence to plan for its case well in advance of the current trial session.

9. Lastly, the Chamber notes its obligation to ensure the right of all Accused persons in this trial to be tried without undue delay, pursuant to Article 20(4)(c) of the Statute.

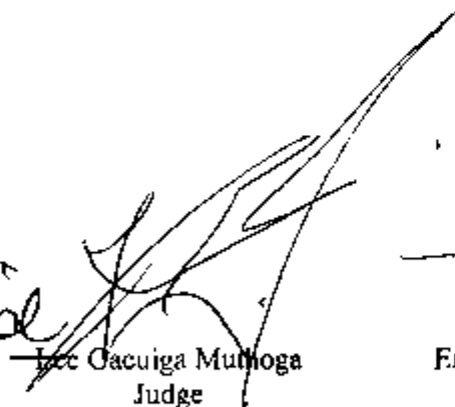
10. Having taken all of these matters into account, the Chamber finds that it would not be in the interests of justice to consider the merits of the Defence Motion, filed outside the time limit.

FOR THESE REASONS, the Chamber

DENIES the Motion in its entirety;

Arusha, 12 February 2008


Khalida Rachid Khan
Presiding Judge


Jee Oacuga Muthoga
Judge


Emile Fransis Short
Judge

