



UNITED NATIONS
KATANGA UNITES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T

20-02-2008

(25469-25465)

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OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 20 February 2008

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

Case No. ICTR-99-50-T

JUDICIAL RECORDS/ARCHIVES
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DECISION ON PROSPER MUGIRANEZA'S MOTION FOR LEAVE TO FILE
DOCUMENTS OUT OF TIME AND
ORDER FOR FURTHER REDUCTION OF WITNESS LIST

Rules 54 and 73 ter (D) of the Rules of Procedure and Evidence

Office of the Prosecutor:

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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**

25468

BACKGROUND

1. The trial in this case commenced in November 2003. To date, the Trial Chamber has heard the case for the Prosecution in its entirety,¹ as well as the defence cases for Accused persons Justin Mugenzi, Casimir Bizimungu,² and Jérôme-Clément Bicamumpaka.³ The case for Prosper Mugiraneza commenced on 18 February 2008, with the Defence calling its first witnesses, following the delivery of its Opening Statement to the Court.

2. On 4 December 2007, the Trial Chamber issued a Scheduling Order⁴ which laid down certain deadlines for the filing of documents by the Prosper Mugiraneza Defence, in anticipation of the commencement of his defence. These included:

- (a) A Final List of Witnesses, no later than 22 January 2008; and
- (b) Any application for the admission of evidence pursuant to Rule 92*bis* of the Rules, no later than 22 January 2008;

3. The Defence filed its Witness List on 24 January 2008,⁵ containing the names of 100 witnesses, 71 of whom were proposed to testify orally, and 29 of whom were proposed to testify by written statement pursuant to Rule 92 *bis* of the Rules.

4. With respect to the filing of its Rule 92 *bis* motion and written statements, the Chamber rendered a written Decision on 28 January 2008, granting the Defence's request for an extension of time to 8 February 2008 for the filing of these materials.⁶

5. With respect to the Witness List filed on 24 January 2008, in that same Decision of 28 January 2008, the Chamber ordered the Defence to file a Revised Witness List, substantially reducing the number of witnesses on its Witness List, no later than 11 February 2008.⁷ The Chamber noted that according to Defence estimates, up to 116 days of continuous sitting time would be required for the testimony of the 71 witnesses proposed to testify orally. The

¹ Although the Prosecution has closed its case, the Chamber has ordered the recall of Prosecution Witness Fidèle Uwizeye for further cross-examination by the Defence on a specific subject matter, see *Prosecutor v. Casimir Bizimungu et al.* Case No. ICTR-99-50-T, Decision on Justin Mugenzi's Motion for the Recall of the Prosecution Witness Fidèle Uwizeye for Further Cross-examination (TC), 9 October 2006.

² The defence case for Casimir Bizimungu has been closed subject to the hearing of testimony of one remaining witness, and one application to add a witness to its Witness List which is pending before the Trial Chamber.

³ The defence case for Jérôme-Clément Bicamumpaka has been closed subject to certain pending issues relating to approximately seven Defence witnesses.

⁴ *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.

⁵ See *Prosecutor v. Casimir Bizimungu et al.* Case No. ICTR-99-50-T, "Confidential Amended Pre-Defense Summary of Anticipated Testimony of Prosper Mugiraneza," filed by the Defence on 24 January 2008. Note that the Defence was supposed to file its Amended Witness List on or before 22 January 2008 and therefore it was filed in breach of the deadline set by the Chamber's Scheduling Order.

⁶ See *Prosecutor v. Casimir Bizimungu et al.* Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Extend Deadlines in Scheduling Order Of 4 December 2007 and Order for Reduction of Witness List (TC), 28 January 2008 ("Decision of 28 January 2008").

⁷ See Decision of 28 January 2008, p. 8. The Order was made pursuant to Rule 73*ter* (D) of the Rules, which provides a Trial Chamber with the discretion to order the Defence to reduce the number of witnesses on its witness list, if it considers that an excessive number of witnesses are being called to prove the same facts; and Rule 54 of the Rules, which provides a Trial Chamber with the discretion to issue any orders as may be necessary for the conduct of the trial.



25467

Chamber found the Witness List to be excessive in the circumstances and inconsistent with the Defence's own submissions on the management of its case.

6. On 12 February 2008 -- one day after the deadline set down by the Chamber - the Defence for Mugiraneza filed its Second Amended Witness List.⁸ This Second Amended Witness List contains the names of 90 Defence witnesses in total, 54 of whom are proposed to testify orally, and 36 of whom are proposed to testify by Rule 92 *bis* written statement.

7. On 13 February 2008, the Defence for Mugiraneza filed the instant Motion, asking the Chamber to consider its Second Amended Witness List and proposed Rule 92 *bis* statements, despite having filed them in breach of their respective deadlines.⁹

DISCUSSION

Motion for Extension of time

8. The Defence requests that the Chamber consider the Second Amended Witness List and proposed Rule 92 *bis* statements, despite their being filed outside their respective time limits.

9. With respect to the Second Amended Witness List, the Chamber notes that it had allowed the Defence two weeks to reduce its witness list, and to re-file accordingly. However, considering that the Second Amended Witness List was filed one day after the deadline set down by the Chamber, the Chamber considers it to be in the interests of justice to overlook the breach of the deadline in these circumstances.

10. With respect to the proposed Rule 92 *bis* written statements, the Chamber notes, firstly, that the filing of these draft 92 *bis* written statements -- on 12 February 2008 - with the Court Management Section ("CMS"), does not amount to compliance with the Chamber's Order of 28 January 2008. The Chamber ordered that the Defence file any application it intended to submit for the admission of evidence in written form, pursuant to Rule 92 *bis* of the Rules, by 8 February 2008. No such application for the admission of this material into evidence, pursuant to Rule 92 *bis* of the Rules, has been filed to date.

11. The Chamber is concerned by the Defence's persistent neglect of the need to comply with deadlines set by the Chamber with respect to the filing of its Rule 92 *bis* application and accompanying written statements. The Chamber notes that the Defence already advised the Chamber -- in its motion of 7 January 2008 - that draft Rule 92 *bis* statements for witnesses in Rwanda had been completed and had only to be forwarded to the Registrar for execution following final editing.¹⁰ The Defence allowed a further one month to lapse before filing its draft statements with CMS for the purposes of scheduling various missions for those statements to be executed. Furthermore, the Chamber does not consider that the reasons set out in the Defence Motion: (1) the ongoing editing of statements; and (2) changes in the

⁸ See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Second Amended Pre-Defence Summary of Anticipated Testimony of Prosper Mugiraneza's Defence Witnesses", dated 12 February 2008.

⁹ See *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosper Mugiraneza's Motion for Leave to File Documents Out of Time", dated 13 February 2008.

¹⁰ *Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosper Mugiraneza's Motion to Extend Deadlines in Scheduling Order of 4 December 2007", filed on 7 January 2007, para. 6.



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composition of the witness list so as to reduce the number of witnesses testifying orally; sufficiently justify this further lapse of time.

12. The Chamber's orders to date concerning the filing of this material have been based upon the Chamber's duty to efficiently manage the *Casimir Bizimungu et al* case, particularly having regard to the rights of all Accused persons in this trial to be tried without undue delay. As already noted by the Chamber, any decision on the admission of Rule 92 *bis* written statements is likely to impact the Defence case for Prosper Mugiraneza in terms of management of witnesses, and management of time. For that reason, and having regard to the volume of witnesses whose evidence is proposed to be admitted in this form, the Chamber considers it desirable for these issues to be decided prior to the commencement of the Defence case for Mugiraneza.

13. The Chamber has made inquiries of the Registry, and understands that various missions for the execution of written statements, so that they comply with Rule 92 *bis* (B) of the Rules, are now underway. It is anticipated that the majority of these statements will be executed by the Registry by 22 February 2008, or shortly thereafter. In light of this fact, despite the Defence's repeated failures to comply with the Chamber's orders for the filing of these materials, the Chamber considers it to be in the interests of justice to extend the deadline for the filing of the Defence's Rule 92 *bis* application to 29 February 2008. The Chamber notes, however, that if all Rule 92 *bis* written statements have not been executed by the new deadline, the Defence should non-the-less file its Rule 92 *bis* application in respect of those witnesses whose executed statements are available at that date. Any additional written statements can be sought to be admitted at a later date, if necessary.

Order for Reduction of Witness List

14. The Defence's Witness List of 24 January 2008 contains the names of 100 witnesses. Its Second Amended Witness List contains the names of 90 witnesses. The Chamber does not consider this to amount to a substantial reduction, as required by its Order of 28 January 2008. Furthermore, redistributing the names of witnesses who were once proposed to testify orally so that they are now proposed to testify by Rule 92 *bis* written statement, does not amount to a reduction in actual number of witnesses. It is not proper to speculate on the probable outcome of any Rule 92 *bis* application. Moreover, even where a Rule 92 *bis* application is granted, it may only be granted in respect of certain written statements, or the Chamber may require that certain witnesses appear for the purposes of cross-examination.¹¹

15. The Chamber notes that the Second Amended Witness List groups together those witnesses who are proposed to testify to the same facts or to related incidents. For example, Witnesses 3-13 (11 witnesses in total) are to testify about events in Kigarama commune;¹² Witnesses 14-19 (6 witnesses in total) are to testify about alleged killings at the Cyamuribwa market;¹³ Witnesses 20-38 (19 witnesses in total) are to testify about pre 6 April 1994 incidents;¹⁴ Witnesses 54 and 57-61 (6 witnesses in total) are to testify about the credibility of

¹¹ Rule 92*bis* (E) of the Rules envisages that, even after granting a Rule 92*bis* motion and admitting the evidence-in-chief of a witness in written form, the Chamber may still require the witness to appear for the purposes of cross-examination.

¹² All witnesses proposed to testify orally.

¹³ All witnesses proposed to testify orally.

¹⁴ All witnesses proposed to testify orally.



25465

Prosecution Witness GJQ;¹⁵ and Witnesses 49, 65-69, and 70-75 (12 witnesses in total) are to testify about the allegations of Prosecution Witness Fidèle Uwizeye.¹⁶

16. The Chamber considers that the Second Amended Witness List is still excessive. The Defence must further reduce its witness list in order to preserve the right of all Accused persons in this case to be tried without undue delay, and in the interests of judicial economy. In so doing, the Defence should have particular regard to those witnesses being called to prove the same facts, as illustrated in paragraph 15, above.

FOR THESE REASONS, the Chamber

GRANTS the Defence Motion in its entirety; and hereby

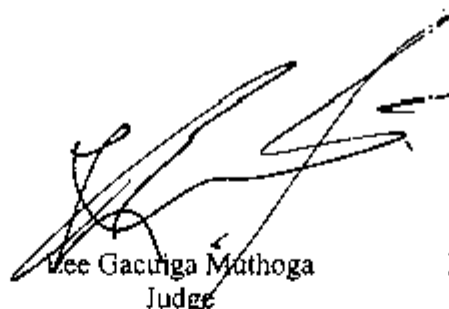
ORDERS the Defence to file its application for the admission of statement(s) in written form in lieu of oral testimony, and accompanying written statements, pursuant to Rule 92 *bis* of the Rules no later than 29 February 2008; and

ORDERS the Defence to further reduce its Second Amended Witness List of 12 February 2008, so as to comply with the Chamber's Order of 28 January 2008 that it substantially reduce the number of witnesses on its Amended Witness List of 24 January 2008, particularly having regard to those who are being called to prove the same facts. The Defence must file its Further Reduced Witness List no later than Friday, 29 February 2008.


Arusha, 20 February 2008



Halida Rachid Khan
Presiding Judge



Vee Gacunga Muthoga
Judge



Emile Francis Short
Judge



¹⁵ One of these witnesses is proposed to testify orally, and the remainder by Rule 92*bis* written statement.

¹⁶ One of these witnesses is proposed to testify orally, and the remainder by Rule 92*bis* written statement.