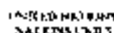


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OR: ENG

Before Judges: Khalida Rachid Khan, presiding
Emille France Short
Lee Gacuiga Muthoga

Registrar: Mr. Adama Dieng

Date: 27 February 2008

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

Case No. ICTR-99-50-T

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Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyamlal Rajapaksa
Mr. Olivier De Schutter

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcell 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. Cynthia Cline for **Prosper Mugiraneza**

[Signature]

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INTRODUCTION

1. By Motion dated 10 December 2007, the Defence for Mugiraneza ("Defence") requests the Trial Chamber to order the Registry to expedite the translation - from French into English - of the Appeals Chamber's judgement in the *Media Case*.¹ The Defence submits that the English judgement summary shows that the Appeals Chamber decided several important issues relevant to the instant case,² and that an English translation of the judgement is necessary for the Judges of the Trial Chamber, Counsel for the Prosecution, Counsel for Mugenzi, and Mugiraneza, all of whom work in English.³

2. On 13 December 2007, the Prosecutor filed a Response⁴ opposing the Motion on the ground that it had been brought before an inappropriate forum; since the request for expedition of translation is purely an administrative matter, it should be brought before the Registry rather than the Trial Chamber.⁵

3. On 21 December 2007, the Registrar filed submissions pursuant to Rule 33 (B) of the Rules of Procedure and Evidence ("Rules").⁶ The Registrar submits that the Mugiraneza Defence should have presented its request for expedited translation to the Registrar. Nonetheless, the Registrar also responds substantively to the Motion in the interests of justice and saving time.⁷

DISCUSSION

4. Article 31 of the Statute of the Tribunal ("Statute") provides that the working languages of the Tribunal are both English and French.

5. Article 20 of the Statute sets out the rights of the accused. Pursuant to Article 20 (4), the accused is entitled to minimum guarantees, including the right to be informed promptly of the nature and cause of the charge against him or her in a language which he or she can understand,⁸ as well as the right to have free assistance of an interpreter if he or she cannot understand or speak the language used in the Tribunal.⁹

6. The Rules also include provisions regarding language. Sub-Rules 3 (A) and 3 (B) mirror provisions in the Statute.¹⁰ Rule 3 (E) states:

¹ Prosper Mugiraneza's Motion for Expedited Translation of the Media Judgement from the Appeals Chamber, filed 11 December 2007 ("Motion"). The Defence suggests that the Chamber set a deadline of 1 February 2008 for the translation to be completed. The *Media Case* is the familiar name for the case of *Prosecutor v Nahimana et al.*, Case No. ICTR-99-52-A, Judgement (AC), 28 November 2007.

² *Ibid*, para. 1.

³ *Ibid*, para. 2.

⁴ Prosecutor's Response to Prosper Mugiraneza's Motion for Expedited Translation on the Media Judgement from the Appeals Chamber, dated 13 December 2007 ("Prosecutor's Response")

⁵ *Ibid*, paras. 1 and 2.

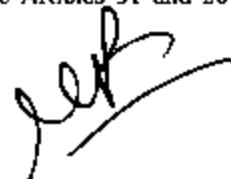
⁶ The Registrar's Submissions in Response to 'Prosper Mugiraneza's Motion for Expedited Translation of the Media Judgement from the Appeals Chamber', dated 21 December 2007 ("Registrar's Submissions")

⁷ *Ibid*, para. 8

⁸ Article 20 (4) (a) of the Statute.

⁹ Article 20 (4) (f) of the Statute.

¹⁰ These sub-Rules provide that the working languages of the Tribunal are both English and French, and that the accused or suspect shall have the right to use his own language. Compare Articles 31 and 20 (4) (f) of the Statute.



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"The Registrar shall make any necessary arrangements for interpretation and translation of the working languages."

7. Rule 45 (A) of the Rules further provides that the Registrar shall keep a "list of counsel who speak one or both of the working languages of the Tribunal..." for the assignment of counsel to indigent suspects or accused. Rule 45 (A) allows for the possibility that an accused person's legal representatives may speak only one of the Tribunal's two official languages. This is the case for the Defence for Prosper Mugiraneza.¹¹ However Registry policy and practice reflect the fact that it is preferred that an accused person's legal team is bilingual.¹²

8. In line with the Statute and the Rules, the Chambers, the Registry, and the Prosecution are generally equipped to operate in either of the two working languages of the Tribunal. This is so as to minimise the likelihood of any delay being occasioned on the basis of translation and interpretation issues.

9. Pursuant to Rule 3 (E) of the Rules, responsibility for interpretations and translations falls squarely within the domain of the Registry. The Chamber considers that a request for expedited translation is an administrative matter which falls within the purview of the Registry,¹³ in whose affairs the Chamber will not intervene, unless the unavailability of a translation impacts directly upon the trial, such as where it is necessary to preserve the rights of the accused persons before it.

10. To date, this Chamber has only intervened in the administrative process of translation with respect to filings before it, including where it was considered necessary to do so in order to preserve the rights of the accused, or to prevent delays in the proceedings.¹⁴

11. The Defence does not submit that any of Prosper Mugiraneza's fair trial rights will be affected by the unavailability of an English translation of the judgement, nor did it move to stay proceedings until a translation was available. The Defence was able to commence its case on 18 February 2008 when it called its first witnesses and the Motion does not in any

¹¹ See Decision on Assignment of Ms. Cynthia Cline as Co-Counsel for the Accused Prosper Mugiraneza, *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-1999-50-T, dated 15 February 2008 ("Decision Appointing Ms. Cline"). See also letter from Counsel for Mugiraneza to the President of the Tribunal, dated 14 January 2007, which is an appeal against the Registrar's decision denying the appointment of Ms. Cline as co-counsel for the Mugiraneza defence team because she does not speak French. See page 2 - both Ms. Cline and counsel for Mugiraneza do not speak French.

¹² The Registrar has strongly adhered to criteria of bilingualism. See Decision Appointing Ms. Cline, page 2 where the Chamber considered "the Guidelines for Remuneration of Counsel Appearing at the ICTR, promulgated by the Registrar on 1 September 1998 ... emphasize that the 'preference for a Co-Counsel should reflect the need to form a team with ... knowledge of the working languages of the Tribunal.'"

¹³ See Prosecutor's Response, para. 4.

¹⁴ In one example, the Bizimungu Defence filed its Rule 98bis motion in French and the Prosecutor sought a delay in responding until it was translated into English. See *Prosecutor v Bizimungu et al.*, "Prosecutor's Urgent Motion for an Extension of Time within which to Respond to the Defence Motions for Judgement of Acquittal Pursuant to Rule 98bis by Casimir Bizimungu, Justin Mugenzi, Jerome Bicamumpaka and Prosper Mugiraneza", 19 July 2005, RP 21667-69. In the other decision relied upon, the Prosecutor had filed its response to the Rule 98bis motion in English and the Trial Chamber granted the Bizimungu Defence an extension of time to reply within ten days of receiving a French translation. See *Prosecutor v Bizimungu et al.*, "Decision on Casimir Bizimungu and Jerome Bicamumpaka's Extremely Urgent Motion Requesting the Trial Chamber to Order Urgent Translation of the Prosecutor's Response Pursuant to Rule 98bis of the Rules as well as Time to File a Reply", 26 September 2005, RP 22269-71.

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way identify how the lack of an English translation of the judgement affects the ability to examine or cross-examine witnesses for the purpose of presenting the Defence case. Indeed, the case presented by the Prosecution against Prosper Mugiraneza – which case the Defence is required to answer - remains unchanged by the *Media* Appeals Chamber judgement.

12. The Chamber now turns to consider the issues listed in the Motion which the Defence submit are addressed by the Appeals Chamber in the *Media* case.¹⁵ The Chamber is of the view that the substance of these issues as listed by the Defence, do not justify the bringing of this Motion before it. Indeed, a number of the issues from the Appeals Chamber judgement, identified by the Defence as a basis for the need for an English translation, relate to factual matters with which this Trial Chamber is not concerned.¹⁶ As regards the impact of the judgement upon legal issues to be ruled upon by this Trial Chamber, the Chamber will address those matters at the appropriate time.

13. While an English translation of the judgement may be required by the Defence for the purposes of preparing closing submissions, the Chamber notes that it is still hearing evidence in this case. In this regard, the Chamber notes the submission of the Registrar that the official English translation of the judgement will be available by mid-May 2008, which is well in advance of the anticipated dates for closing submissions in this case.¹⁷ The Chamber also notes and accepts the explanation provided by the Registrar of the steps and timeframes involved in the translation of documents.¹⁸ The Chamber considers it necessary to point out that if it required an expedited translation of any material for its own purposes, it would make such a request to the Registrar. This is not an appropriate matter for the Defence to raise with the Chamber.

Conclusion

14. The Chamber finds that, at the current stage of these proceedings, the unavailability of an English version of the *Media* Appeals Chamber judgement does not impede the ability of Counsel for Mugiraneza to effectively present the Defence case, nor does it impact upon the rights of the accused.

15. Further, the Chamber considers that the request for an expedited translation - a purely administrative matter - was improperly brought before this Chamber when clearly the Registry is the appropriate forum. Accordingly, the Chamber will not grant the order in the terms sought.

16. Taking into account all the circumstances of this case, the manner in which this matter has been handled by the Defence, and the lack of merit to the request, the Chamber considers the Motion to be frivolous¹⁹, and to have unnecessarily expended valuable judicial time and

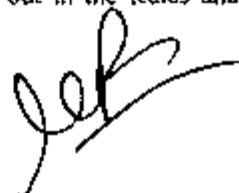
¹⁵ Motion, para. 4.

¹⁶ Motion, paras 4.a to 4.i.

¹⁷ See Registrar's Submissions, para. 19.

¹⁸ *Ibid.*, paras. 12-19.

¹⁹ See Decision on Prosper Mugiraneza's Motion for Appropriate Relief for Violation of Rule 66, 4 February 2005, para. 13, where this Chamber found that the Defence Motion lacked merit to such an extent that it was frivolous and that its filing constituted an abuse of process. See also *Nahimana et al., v The Prosecutor*, Case No. ICTR-99-52-A, Decision on Hassan Ngeze's Motion Appealing the Registrar's Denial of Marriage Facilities (AC), 20 January 2005, on the failure to follow procedures as set out in the Rules and making a request before the inappropriate forum.



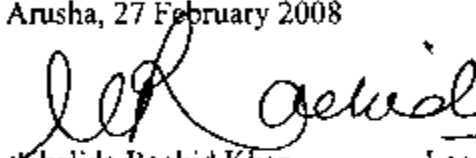
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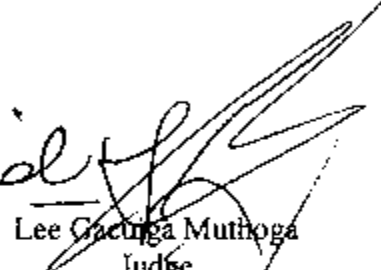
resources. Accordingly, the Chamber considers it appropriate in these circumstances to direct the Registrar, pursuant to Rule 73 (F) of the Rules²⁰, to deny costs associated with this matter.


FOR THESE REASONS, the CHAMBER

- I. **DENIES** the Defence Motion in its entirety.
- II. **DIRECTS** the Registry to withhold payment of costs associated with the filing of "Prosper Mugiraneza's Motion for Expedited Translation of the *Media* Judgement from the Appeals Chamber" filed on 11 December 2007.

Arusha, 27 February 2008


Khalida Rachid Khan
Presiding Judge


Lee Gacunga Muthoga
Judge


Emile Francis Short
Judge

[Seal of the Tribunal]



²⁰ Rule 73 (F) states that "a Chamber may impose sanctions against Counsel if Counsel brings a motion ... that, in the opinion of the Chamber, is frivolous or is an abuse of process. Such sanctions may include non-payment, in whole or in part, of fees associated with the motion and/or costs thereof."