



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-99-50-T

05-05-2008

(26446-26444)

TRIAL CHAMBER II

OR: ENG

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

Registrar: Mr. Adama Dieng

Date: 5 May 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 PROSPER MUGIRANEZA'S CONFIDENTIAL MOTION FOR
VIDEO-LINK TESTIMONY OF WITNESS RWU**

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. Shyam Lal Rajapaksa
Mr. Olivier De Schutter

Counsel for the Defence:

Ms. Michelyne C. St. Laurent for Casimir Bizimungu
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi
Mr. Michel Croteau and Mr. Philippe Larochelle for Jérôme-Clément Bicomumpaka
Mr. Tom Moran and Ms. Cynthia Cline for Prosper Mugiraneza

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INTRODUCTION

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1. By Motion dated 28 April 2008¹, the Defence for Prosper Mugiraneza requests the Trial Chamber, pursuant of Rule 54 of the Rules of Procedure and Evidence ("Rules"), to allow Witness RWU to testify by video-link from the State in which he currently resides, as he is unwilling to travel to Arusha to testify.

2. The Prosecution opposes the Defence request, submitting that the Defence has failed to advance adequate reasons to justify the making of such an order.²

DISCUSSION

3. Rule 90 (A) of the Rules states that "witnesses shall, in principle, be heard directly by the Chambers" at the seat of the Tribunal in Arusha. The Rules do not expressly provide for video-link testimony, but this option is well developed in the jurisprudence of the Tribunal as a means for hearing the testimony of witnesses who are unable or unwilling to travel to Arusha.

4. A Chamber may authorize 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. Where the witness is unwilling to attend, his refusal must be genuine and well-founded, giving the Chamber reason to believe that the testimony would not be heard unless the video-link is authorized.³

5. The purpose of Witness RWU's testimony, the Defence submits, is "to attack the credibility of an important prosecution witness."⁴ The Chamber considers that Witness RWU's testimony may be important to Mr. Mugiraneza's case.

6. The Chamber will now turn to the issue of the unwillingness of the Witness to testify in Arusha, and whether a good reason has been advanced for that unwillingness. The Defence informs the Chamber that Witness RWU has previously testified in Arusha but that he does not wish to do so on this occasion. The Defence states that the Witness has recently retired and will be residing in a remote area of Rwanda – therefore "travel to Arusha would be very inconvenient," such that he is unwilling to travel to Arusha.⁵ Annexed to the Defence Motion is an affidavit of Defence investigator, Mr. Innocent

¹Prosecutor v. Casimir Bizimungu et al., Case No. ICTR-98-50-T, "Prosper Mugiraneza's Motion for Video-link testimony for Witnesses RWU", filed on 28 April 2008 ("Motion").

² Bizimungu et al., "Prosecutor's Response to Prosper Mugiraneza's Motion for Video-link testimony of Witness RWU", filed on 30 April 2008 ("Response"), paras. 4-6.

³ Prosecutor v. Bizimungu et al., Case No. ICTR-99-50-T, Decision on Casimir Bizimungu's Extremely Urgent and Confidential Motion to Have Witness WDK Testify via Video-Link (TC), 7 December 2006, para. 3.

⁴ Motion, para. 3.

⁵ Motion, para. 5.

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Niyonsenga, stating, among other things, that the Witness "would like to testify by video-link" from Kigali.

7. The Chamber is neither satisfied that the Witness is unwilling to attend to testify in person, nor that, if he is in fact unwilling to testify in Arusha, that any good reason for that unwillingness has been advanced. In this regard, the Chamber notes that the Witness is retired, and that he has previously been able to travel to Arusha to testify in person before the Tribunal. The Chamber considers that convenience is not a sufficient basis for it to allow a Witness to testify by video-link. The Chamber also notes that many witnesses who testify before this Tribunal reside in remote locations in Rwanda, and suffer some disruption to their personal schedules in order to give evidence.


8. The Chamber therefore finds that inadequate reasons have been advanced to justify a departure from Rule 90 (A) of the Rules.

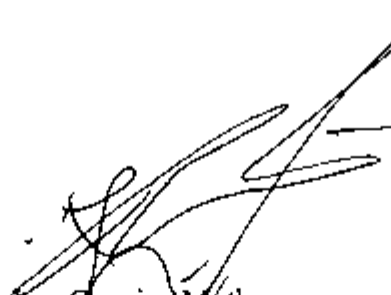
9. Finally, the Chamber notes that this is the second Motion brought by the Mugiraneza Defence seeking video-link testimony for a witness without adequate reason. The Chamber considers such motions to be frivolous, placing unnecessary strain on judicial time and resources. The Chamber urges the Defence to refrain from filing unsubstantiated motions before it in the future.

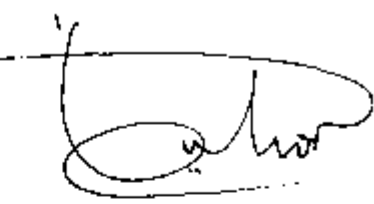
FOR THESE REASONS, the Chamber

DENIES the Defence Motion in its entirety.

Arusha 5 May 2008


Khalida Rachid Khan
Presiding Judge


Lee Gacunga Muthoga
Judge


Emile Francis Short
Judge

[Seal of the Tribunal]
