



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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*[Signature]*

ICTR-99-50-T  
19-05-2008  
(26607-26604)

OR: ENG

TRIAL CHAMBER II

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

**Registrar:** Mr. Adama Dieng

**Date:** 19 May 2008

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JUDICIAL DEPARTMENT  
INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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

Case No. ICTR-99-50-T

**DECISION ON PROSPER MUGIRANEZA'S MOTION TO SUBPOENA 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 Bicamumpaka**
- Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

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## INTRODUCTION

1. The Defence for Prosper Mugiraneza requests the Trial Chamber to issue a subpoena to compel the appearance of Witness RWU, a Rwandan Witness who, the Defence submits, refuses to testify voluntarily before the Trial Chamber.<sup>1</sup>

2. The Prosecution does not oppose the Motion.<sup>2</sup>

## DISCUSSION

3. Rule 54 of the Rules bestows a discretionary power upon the Chamber to issue a subpoena where "necessary for the purposes of an investigation or for the preparation or conduct of the trial."

4. According to the jurisprudence of the *ad hoc* Tribunals, subpoenas may only be issued where (i) reasonable attempts have been made to obtain the voluntary cooperation of the witness; (ii) the witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial; and (iii) the witness's testimony is necessary and appropriate for the conduct and fairness of the trial.<sup>3</sup> To satisfy these requirements:

[T]he applicant may need to present information about such factors as the position held by the prospective witness in relation to the events in question, any relation the witness may have had with the accused which is relevant to the charges, any opportunity the witness may have had to observe or learn about those events, and any statements the witness made to the Prosecution or others in relation to them. The Trial Chamber is vested with discretion in determining whether the applicant succeeded in making the required showing, this discretion being necessary to ensure that the compulsive mechanism of the subpoena is not abused.<sup>4</sup>

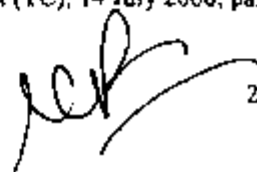
5. This Chamber has previously noted that merely helpful or convenient information does not warrant the extraordinary measure of issuing a subpoena:

<sup>1</sup> Prosper Mugiraneza's Motion to Subpoena Witness RWU, filed 12 May 2008 ("Motion"). The Defence Motion attaches as Exhibit A the affidavit of Innocent Niyonsenga, an investigator for Mugiraneza, which documents Witness RWU's refusal to appear voluntarily before the Trial Chamber.

<sup>2</sup> Prosecutor's Response to Prosper Mugiraneza's Motion to Subpoena Witness RWU, filed 14 May 2008.

<sup>3</sup> *Prosecutor v. Krstic*, Case No. IT-98-33-A, Decision on Application for Subpoenas (AC), 1 July 2003, para. 10 ("Krstic Appeal Decision"); *Prosecutor v. Halilovic*, Case No. IT-01-48-AR73, Decision on the Issuance of Subpoenas (AC), 21 June 2004, para. 7 ("Halilovic Decision"); *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena (TC), dated 26 September 2008, para. 4; *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Defence Motion for Issuance of Subpoena to Witness T (TC), 8 February 2006, para. 4; *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Request for a Subpoena (TC), 11 September 2006, para. 5; *Bagosora et al.*, Decision on Request for Subpoenas of United Nations Officials (TC), 6 October 2006, para. 3; *Bagosora et al.*, Decision on Request for Subpoena of Ami R. Mpungwe (TC), 19 October 2006, para. 2.

<sup>4</sup> *Halilovic Decision*, para. 6; *Bizimungu et al.*, Decision on Jerome-Clement Bicamumpaka's Request for a Subpoena (TC), dated 26 September 2008, para. 4; *Prosecutor v. Brdanin and Talic*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal (TC), 11 December 2002, para. 31; *Prosecutor v. Milosevic*, Case No. IT-02-54-T, Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schröder (TC), 9 December 2005, para. 35 ("Milosevic Decision"); *Bagosora et al.*, Decision on Request for a Subpoena for Major Jacques Biot (TC), 14 July 2006, para. 2.



26605

In considering whether the prospective testimony will materially assist the applicant, it is not enough that the information requested may be helpful or convenient for one of the parties: it must be of substantial or considerable assistance to the Accused in relation to a clearly identified issue that is relevant to the trial. In this regard, the Chamber shall consider the specificity with which the prospective testimony is identified and whether the information can be obtained by other means. The Chamber recalls that subpoenas should not be issued lightly<sup>5</sup> and that it must consider not only... the usefulness of the information to the applicant, but its overall necessity in ensuring that the trial is informed and fair.<sup>5</sup>

*Reasonable attempts have been made to obtain the voluntary cooperation of the witness*

6. The Defence submits that Witness RWU has declined to appear voluntarily before the Trial Chamber.<sup>6</sup> The Defence explains that Witness RWU may not be willing to testify voluntarily because the subject of RWU's proposed testimony deals with matters that arose in closed session during the cross-examination of Prosecution Witness GJQ, and thus cannot be discussed with RWU.<sup>7</sup> Under these circumstances, the Chamber is satisfied that the Defence has adequately shown that it has not been able to obtain the voluntary testimony of Witness RWU despite its reasonable efforts.

*The witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial*

7. The Defence submits that Witness RWU is expected to provide evidence intended to impeach the credibility of Prosecution Witness GJQ. During GJQ's cross-examination, the Defence confronted him with questions related to Witness RWU, and GJQ's relationship to RWU. At that time, the Chamber inquired as to whether the Defence intended to call Witness RWU to counter GJQ's story.<sup>8</sup> The Chamber is satisfied that the Defence has presented sufficient information regarding Witness RWU to suggest that his testimony may materially assist the Defence to impeach Prosecution Witness GJQ's credibility.<sup>9</sup>

*The witness's testimony is necessary and appropriate for the conduct and fairness of the trial*

8. The Witness is in a unique position to testify on the subject of his proposed testimony. The Chamber is satisfied (i) that Witness RWU's evidence cannot be reasonably obtained elsewhere and, given the seriousness of the allegations made by Witness GJQ against Mugiraneza, (ii) that Witness RWU's proposed testimony is necessary and appropriate for the conduct and fairness of the trial.

**FOR THESE REASONS**, the Chamber

**GRANTS** the Motion;

**ORDERS** the Registrar to prepare a subpoena in accordance with this Decision, addressed to Witness RWU requiring appearance before this Chamber to give testimony in the present

<sup>5</sup> Decision on Prosper Mugiraneza's Motion for a Subpoena, 23 January 2008, para. 5 (internal quotations and citations omitted).

<sup>6</sup> Motion, para. 2; Exhibit A, Affidavit of Innocent Niyonsenga related to Witness RWU.

<sup>7</sup> Motion, paras. 5-6.

<sup>8</sup> T. 16 March 2005, pp. 33-48 (closed session).

<sup>9</sup> Motion, para. 4.



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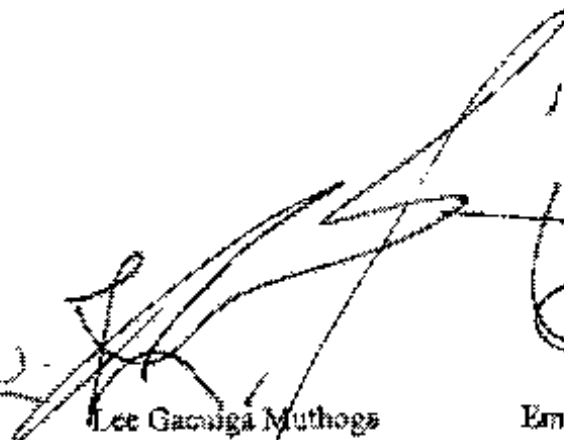
case, and to communicate it, with a copy of the present Decision, to the Republic of Rwanda, as soon as practicable; and

**DIRECTS** the Registry to communicate the subpoena to Witness RWU through appropriate diplomatic channels, accompanied by a copy of this Decision, as soon as practicable.

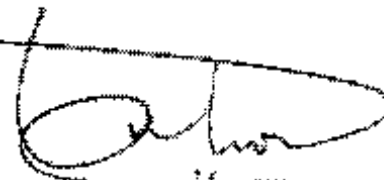
Arusha, 9 May 2008



Khalid bin Rachid Khan  
Presiding Judge



Lee Gacanga Muthoga  
Judge



Emile Francis Short  
Judge

ICTR  
[Sent by the Tribunal]



