



UNITED NATIONS
NATIONS UNIES

**International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda**

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 21 May 2008

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

Case No. ICTR-99-50-T

**ORAL RULING ON MUGENZI'S MOTION FOR
THE ISSUANCE OF A BENCH WARRANT FOR WITNESS GFA
OR, ALTERNATIVELY, TO HOLD GFA IN CONTEMPT**

Rules 54 and 77 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. Shyamlal 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**

From pages 28 to 30, Transcript of Proceedings, 21 May 2008

Here is the oral ruling on Mugenzi's motion for the issuance of a bench warrant for Witness GFA pursuant to Rule 54 or, alternatively, to hold GFA in contempt pursuant to Rule 77.

The Chamber notes that the circumstances of Witness GFA's recovery for further cross-examination and subsequent disappearance are already part of the trial record and will not recount them here.

After Witness GFA's disappearance on 14th and 15th May 2008, counsel for Mr. Justin Mugenzi requested the Chamber to issue a bench warrant for GFA's arrest so that he could be returned to the Chamber for further cross-examination.

Alternatively, counsel for Mr. Mugenzi submitted that GFA should be held in contempt pursuant to Rule 77.

Mr. Gumpert, counsel for Mr. Mugenzi, submitted that, according to the information provided to the Chamber by the Witnesses and Victims Support Section and the registry, GFA's -- GFA has voluntarily absented himself from the proceedings. He further submitted that the Chamber is, therefore, empowered pursuant to Rule 54 to issue a bench warrant stating that GFA should be apprehended and returned to the Chamber to commence his evidence.

In the alternative, Mr. Gumpert, for Mr. Mugenzi, submitted that the Chamber should hold GFA in contempt of the Tribunal pursuant to Rule 77 for failing to comply with an order to attend before the Chamber without just cause -- excuse.

Counsel for Bizimungu, Bicomumpaka, and Mugiraneza generally supported the submissions of counsel for Mr. Mugenzi with some discrepancies over the proper wording of any Chamber order and who ought to be allowed to be present when and if GFA is apprehended pursuant to any warrant the Chamber may issue.

The Prosecution opposed the Defence request, noting that on 5th May 2008 the Chamber informed Witness GFA that he was discharged and asked him to leave the courtroom. It was not until after the witness left the courtroom that the Chamber ordered that he be kept in Arusha until

further directions from it. Therefore, the Prosecution submitted that GFA had not violated any order of the Chamber so no warrant should be issued against him and he should not be held in contempt.

Having heard the parties, the Chamber determined that it needed to hear further information regarding GFA's disappearance and what information he had regarding the Chamber's order. The Chamber, therefore, ordered WVSS and the registry to file submissions on these matters.

The registry filed its submissions on 20th May 2008, one day after the date requested by the Chamber. Having received the submissions, Mr. Gumpert, for Mr. Mugenzi, made further submissions, suggesting that it was clear from the submissions that GFA was aware of the Chamber's order that he kept -- that he be kept in Arusha.

Counsel for Mr. Mugenzi also raised issue with -- with several discrepancies in the registry's submissions and asks -- asked that these be clarified for the benefit of the record.

The Chamber has considered the submissions of the parties, and of the registry and does not find that it is appropriate under circumstances -- under circumstances to either issue a warrant for GFA's arrest or to initiate contempt proceedings against him. The Chamber also notes that -- the discrepancies in the registry's report and does not consider that any statement therein ought to be the basis of a ruling detrimental to GFA.

Regarding GFA, the Chamber considers that the only fair and appropriate measure to be taken at this point to secure his appearance is to issue a subpoena to compel his appearance. Subpoenas may be issued where, one, reasonable attempts have been made to obtain the voluntary cooperation of the witness; two, the witness has information which can materially assist the applicant in respect of clearly identified issues relevant to the trial; and, three, the witness -- the witness's testimony is necessary and appropriate for the conduct and fairness of the trial.

The Chamber considers that the circumstances of GFA's disappearance make it clear that he will no longer voluntarily appear before the Chamber.

Regarding the second and third prongs of the subpoena test, the Chamber notes that it re-called GFA for further cross-examination because it had information that GFA wish -- wished to recant

the testimony previously given before this Chamber on behalf of the Prosecution.

The Chamber considers that GFA, therefore, has information which can materially assist the Defence, particularly -- particularly for Mr. Bicamumpaka, in respect of clearly identified, relevant issues, and that his further cross-examination may be necessary and appropriate for the conduct and fairness of the trial.

In the usual course of events, a subpoena issued by the Tribunal is addressed to a subject -- to its subject and issued to the authorities of the subject's state of residence, to be communicated to the subject through appropriate diplomatic channels.

Under the particular circumstances of this case, the Chamber orders that the registrar prepare a subpoena in accordance with this decision, addressed to Witness GFA, requiring appearance before this Chamber for further cross-examination in the present case and to communicate it, along with the copy of the present decision, to the Tanzanian authorities so that it may be communicated to GFA through appropriate channels which he is located -- when he is located by the Tanzanian authorities.

If, through its diplomatic channels, the registry obtains information to the effect that GFA is no longer in Tanzania, then the Chamber orders the registry to communicate the subpoena, along with a copy of this decision, to the authorities -- to the authorities of the state in which GFA is located.