



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:** Mr. Adama Dieng

**Date:** 3 June 2008

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

**Case No. ICTR-99-50-T**

**SECOND DECISION ON JÉRÔME-CLÉMENT BICAMUMPAKA'S REQUEST  
FOR A SUBPOENA**

*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. Shyamlal Rajapaksa  
Mr. Olivier De Schutter  
Mr. Kartick Murukutla  
Ms. Marie Ka

**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**

## INTRODUCTION

1. On 5 February 2008 the Defence for Jérôme-Clément Bicamumpaka (“Defence”) filed a Motion requesting the Chamber to issue a subpoena to compel the appearance of Witness LF-1.<sup>1</sup> On 12 February 2008, the Chamber denied the Defence Motion, noting that it had been brought outside the prescribed time limit.<sup>2</sup> The Chamber granted the Defence application for certification to appeal the Impugned Decision.<sup>3</sup> On 22 May 2008, the Appeals Chamber granted the Defence appeal and directed the Chamber to consider the merits of the Defence Motion.<sup>4</sup>
2. The Prosecution did not respond to the Defence Motion.

## DISCUSSION

3. Rule 54 of the Rules empowers the Chamber to issue a subpoena where “necessary for the purposes of an investigation or for the preparation or conduct of the trial.”
4. 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>5</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

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<sup>1</sup> Confidential Request for Subpoena, filed 5 February 2008 (“Defence Motion”). The Defence filed two documents in support of the request for subpoena (Annex A and Annex B). Annex A is a Witness Statement, purportedly signed by Witness LF-1, on 17 July 2006. Annex B is an Affidavit from Co-Counsel Mr. Philippe Larochelle attesting to the unwillingness of Witness LF-1 to come to Arusha to testify.

<sup>2</sup> Decision on Jérôme-Clément Bicamumpaka’s Request for a Subpoena (TC), 12 February 2008 (“Impugned Decision”).

<sup>3</sup> Decision on Jérôme-Clément Bicamumpaka’s Application for Certification to Appeal the Trial Chamber’s Decision on Bicamumpaka’s Request for a Subpoena of 12 February 2008 (TC), 19 March 2008.

<sup>4</sup> Decision on Jérôme-Clément Bicamumpaka’s Interlocutory Appeal Concerning a Request for Subpoena (AC), 22 May 2008.

<sup>5</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.

being necessary to ensure that the compulsive mechanism of the subpoena is not abused.<sup>6</sup>

5. Merely helpful or convenient information does not warrant the extraordinary measure of issuing a subpoena:

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>7</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>7</sup>

*Have reasonable attempts been made to obtain the voluntary cooperation of Witness LF-1?*

6. The Defence asserts that, despite initially agreeing to do so, Witness LF-1 is no longer willing to come to Arusha to testify. The Defence supports this submission with the affidavit of Co-Counsel Mr. Philippe Larochelle. Through his affidavit, Mr. Larochelle states that he met with Witness LF-1 in July 2006, obtained a statement from him, and has had several telephone conversations with the Witness since then. The Witness apparently informed the Defence that he was no longer willing to come to Arusha to testify in July 2007, and Mr. Larochelle was unable to convince him to do so through subsequent telephone conversations.<sup>8</sup>

7. The Chamber notes that the affidavit does not explain Witness LF-1's given reasons for his refusal to come to Arusha to testify, nor does it suggest that the Defence inquired as to these reasons. Nonetheless, it is clear that Witness LF-1 has consistently refused to voluntarily cooperate with the Defence since July 2007, and there is no indication that the Defence's efforts to obtain his cooperation have been less than reasonable.

*Does Witness LF-1 have information which can materially assist the Defence with regard to clearly identified issues relevant to the trial?*

8. The Defence submits that Witness LF-1's proposed testimony would show that the Rwandan Ministry of Foreign Affairs, where the Witness was employed, was unable to function after 6 April 1994. According to LF-1's statement, annexed to the Defence Motion, the conditions in Murambi, where the Ministry was re-located, were not adequate. In addition, the Witness never saw more than four staff persons present, whereas in Kigali prior to 6 April 1994, the Ministry functioned with approximately 100 employees.<sup>9</sup> The Witness

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<sup>6</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.

<sup>7</sup> Decision on Prosper Mugiraneza's Motion for a Subpoena, 23 January 2008, para. 5 (internal quotations and citations omitted).

<sup>8</sup> Defence Motion, Annex B.

<sup>9</sup> Defence Motion, Annex A.

only met with Mr. Bicomumpaka once, but will testify that Mr. Bicomumpaka was never able to “fully occupy” the position of Minister of Foreign Affairs.<sup>10</sup>

9. The Chamber notes that the Defence has consistently maintained the inability of the Interim Government, including the Ministry of Foreign Affairs, to function properly. As a result, the Defence asserts, Mr. Bicomumpaka did not exercise true authority as Minister of Foreign Affairs. This claim is meant to raise doubt regarding the Prosecution’s allegation that Mr. Bicomumpaka “exercised authority and control over all the institutions and staff members in his ministry.”<sup>11</sup> The Chamber considers that Witness LF-1’s proposed testimony can materially assist the Defence with regard to clearly identified issues related to the trial.

*Is Witness LF-1’s testimony necessary and appropriate for the conduct and fairness of the trial?*

10. In its amended witness list of 23 May 2007, the Defence listed several witnesses whose proposed testimony concerned, in part, the inability of the Interim Government to function properly. Of these proposed witnesses, only LF-1 worked directly with Mr. Bicomumpaka in the office of the Ministry of Foreign Affairs. In addition, the Defence did not, in the end, call the majority of these witnesses. Under these circumstances, the Chamber considers that LF-1’s testimony is necessary and appropriate for the conduct and fairness of the trial.

**FOR THESE REASONS**, the Chamber

**GRANTS** the Defence Motion;

**ORDERS** the Registrar to prepare a subpoena in accordance with this Decision, addressed to Witness LF-1 requiring his appearance before this Chamber to give testimony in the present case, and to communicate it, with a copy of the present Decision, to the authorities of the State where he resides, as soon as practicably possible; and

**DIRECTS** the Registry to communicate the subpoena to Witness LF-1 through appropriate diplomatic channels, accompanied by a copy of this Decision, as soon as practicably possible.

Arusha, 3 June 2008

Khalida Rachid Khan  
Presiding Judge

Lee Gacuiga Muthoga  
Judge

Emile Francis Short  
Judge

[Seal of the Tribunal]

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<sup>10</sup> *Ibid.*

<sup>11</sup> Defence Motion, para. 11 (referring to paragraph 4.20 of the Indictment).