



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

22942
RQ

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 5 April 2006

ICTR-99-50-T
S-04-2006
(22942-22940)

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

Case No. ICTR-99-50-T

**DECISION ON PROSPER MUGIRANEZA'S EMERGENCY MOTION TO VARY
CONDITIONS ON INTERVIEW OF JEAN KAMBANDA**
Rule 73 (B) 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. George William Mugwanya
Mr. Shyamlal Rajapaksa

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for **Casimir Bizimungu**
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**
Mr. Pierre Gaudreau and Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr. Tom Moran and Ms. Marie-Pierre Poulain for **Prosper Mugiraneza**

22941

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“Tribunal”),

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, presiding, Judge Lee Gacuiga Muthoga and Judge Emile Francis Short (the “Trial Chamber”);

BEING SEIZED of “Prosper Mugiraneza’s Emergency Motion to Vary Conditions on Interview of Jean Kambanda”, filed on 20 March 2006 (the “Motion”);

CONSIDERING the “Prosecutor’s Response to Prosper Mugiraneza’s Motion to Vary Conditions on Interview of Jean Kambanda”, filed on 24 March 2006 (the “Response”);

RECALLING the “Decision on Prosper Mugiraneza’s Motion to Vary the Restrictions in the Trial Chamber’s Decision of 2 October 2003 related to Jean Kambanda”, dated 24 August 2004 (the “Order of 24 August 2004”), and the “Decision on Prosper Mugiraneza’s Extremely Urgent Motion to Vary Conditions of Interview with Jean Kambanda”, dated 19 January 2005;

NOW DECIDES the matter solely on the basis of the briefs of the parties pursuant to Rule 73 (A).

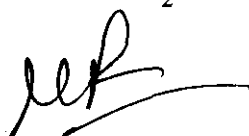
SUBMISSIONS

1. The Defence requests the Chamber to vary its Order of 24 August 2004 which allowed Mugiraneza’s Counsel to interview Jean Kambanda in the presence of a Registry representative. It submits the requirement that a representative of the Registry be present at such interview is no longer needed, as the Prosecution has concluded its case without calling Kambanda as a witness. Furthermore, the Defence states that Kambanda is unwilling to be interviewed in the presence of a representative of the Registry. According to the Defence, Kambanda is presently residing in the United Nations Detention Facility in Arusha awaiting to testify in another case presently being heard by the Tribunal. The Defence claims that other Defence Counsel may freely interview Jean Kambanda, but Mugiraneza’s Counsel may not, due to the restrictions imposed by the Order of 24 August 2004.
2. The Prosecution submits that the Defence Motion “lacks a legal basis” to request the Chamber to vary its previous order. The Prosecution argues that the restriction was based upon a suggestion of the Defence and the conditions for that restriction were intended to be fair to both parties.

DELIBERATIONS

3. In its Order of 24 August 2004, the Chamber stated that “as suggested by the Defence and in order to avoid any possible allegation of improper conduct against any party involved in this process, the Trial Chamber is of the view that this interview shall take place in the presence of a neutral and third party, namely a representative of the Registrar.”¹ Save for these restrictions, the Defence would be free to interview Jean Kambanda on terms acceptable to him.

¹ “Decision on Prosper Mugiraneza’s Motion to Vary the Restrictions” in the Trial Chamber’s Decision of 2 October 2003 related to Jean Kambanda, 24 August 2004.



22940

4. The concern facing the Chamber before it handed down its Order was that had the Defence been allowed unrestricted access to Kambanda, and had he then refused to testify for the Prosecution, the Defence may have exposed itself to allegations of improper conduct. The Decision of the Chamber was intended to prevent such allegations. The Prosecution case has closed and Jean Kambanda did not testify as a Prosecution Witness. Thus, the aforementioned considerations informing the Chamber's Order of 24 August 2004 are no longer relevant.
5. Accordingly, the Chamber finds the requirement that a representative of the Registry be present at the interview is no longer necessary.


FOR THE FOREGOING REASONS, THE CHAMBER

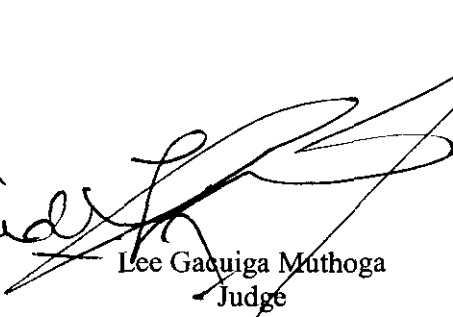
GRANTS the Defence Motion in the following terms only:


REMOVES the requirement that a representative of the Registry be present at the interview of Jean Kambanda by Counsel for Mugiraneza;

REQUESTS the Registrar to make arrangements as soon as is practicable to facilitate the interview of Jean Kambanda by Counsel for Mugiraneza, if Jean Kambanda is so disposed.

Arusha, 5 April 2006


Khalida Rachid Khan
Presiding Judge


Lee Gacuiiga Muthoga
Judge


Emile Francis Short
Judge

[Seal of the Tribunal]

