

ICTR-99-50-T
(19-01-2005
20126 — 20123)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

20126
smmbg

Or: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 19 January 2005

The PROSECUTOR
v.
Casimir BIZIMUNGU
Justin MUGENZI
Jérôme-Clément BICAMUMPAKA
Prosper MUGIRANEZA

Case No. ICTR-99-50-T

JUDICIAL RECORDS/ARCHIVES
ICTR
2005 JAN 19 P 12: 06
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DECISION ON PROSPER MUGIRANEZA'S EXTREMELY URGENT MOTION TO VARY CONDITIONS OF INTERVIEW WITH JEAN KAMBANDA

Office of the Prosecutor:

Mr. Paul Ng'arua
Mr. Ibukunolu Babajide
Mr. Justus Bwonwonga
Mr. Elvis Bazawule
Mr. Shyamlal Rajapaksa

Counsel for the Defence:

Ms. Michelyne C. St. Laurent and Ms. Alexandra Marcil for Casimir Bizimungu
Mr. Ben Gumpert for Justin Mugenzi
Mr. Pierre Gaudreau and Mr. Michel Croteau for Jérôme-Clément Bicomumpaka
Mr. Tom Moran and Mr. Christian Gauthier for Prosper Mugiraneza

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

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

BEING SEIZED of "Prosper Mugiraneza's Extremely Urgent Motion to Vary Conditions of Interview with Jean Kambanda" filed on 18 January 2005 (the "Motion");

HAVING RECEIVED the "Prosecutor's Response to Mugiraneza's Extremely Urgent Motion of 17 January 2005 to Vary Conditions of Interview with Jean Kambanda" filed on 18 January 2005 (the "Response");

NOW DECIDES THE MOTION

Procedural History

1. On 2 October 2003 the Chamber issued a Decision (the "*First Decision*") granting the Defence Motion for access to potential Prosecution Witness Jean Kambanda in order to interview him, provided that (i) Jean Kambanda consents to such interview, and (ii) in order to protect the integrity of the proceedings, a representative of the Prosecution may be present during the interview.¹ Jean Kambanda subsequently made it known that he was willing to be interviewed by the Defence, however on the condition that such interview take place in the absence of a representative of the Prosecution.² The Defence applied for a variation of the conditions laid down in the *First Decision*, this application being decided by the Chamber on 24 August 2004 (the "*Second Decision*").³ Having reviewed the *First Decision* in light of the changed circumstances, the Chamber varied the conditions for the interview as follows:

ORDERS that the Defence for Prosper Mugiraneza be allowed to interview Jean Kambanda without a representative of the Office of the Prosecutor being present.

INSTRUCTS the Registrar to make all necessary arrangements for the interview of Jean Kambanda by the Defence for Prosper Mugiraneza and to designate a representative who will attend the interview.

¹ *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Require the Registrar to Allow Access to a Witness (TC), 2 October 2003

² *Letter from Jean Kambanda to Monsieur Jean-Pelé Fomété, Conseiller Juridique de la Section de l'Administration des Chambres*, 3 December 2003, attached to "Prosper Mugiraneza's Motion to Vary Restrictions in the Trial Chamber's Decision of 2 October 2003 Related to Access to Jean Kambanda", filed on 12 December 2003.

³ *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion to Vary the Restrictions in the Trial Chamber's Decision of 2 October 2003 Related to Access to Jean Kambanda (TC), 24 August 2004



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Submissions

2. The Defence informs the Chamber that, following the Chamber's Order of 24 August 2004, on 17 January 2005 it attempted to interview Prosecution Witness Jean Kambanda, who is currently imprisoned in Mali following his conviction by the Tribunal, in the presence of a representative of the Registry pursuant to the terms of the Order. According to the Defence, Jean Kambanda refused to be interviewed by the Defence in the presence of a representative of the Tribunal. This information has been confirmed by the Registry.⁴
3. The Defence now moves the Chamber to vary the *Second Decision* to authorise Defence Counsel to meet with and interview Jean Kambanda alone.
4. The Prosecution objects to the Motion. It notes that the conditions for interview suggested by the Defence are at the whim of Jean Kambanda. It submits that in the absence of a representative of the Registry, Defence Counsel cannot guarantee that no improper influence will be placed on the Witness. It recalls the *First Decision*, where the Chamber held that "the presence of the opposing party during such interviews is necessary to protect the integrity and transparency of the process".⁵
5. The Prosecution recalls that the Chamber ordered proper arrangements to be made prior to the interview of Jean Kambanda, and now surmises that this was not done. The Prosecution submits that whether or not Jean Kambanda was willing to be interviewed under the conditions laid down by the Chamber should have been established before the mission to Mali was undertaken.

HAVING DELIBERATED

6. The Chamber in the *Second Decision* reviewed the circumstances surrounding the application by the Defence and set conditions which were intended to be fair to both parties and to preserve the integrity of the proceedings. The Chamber has again reviewed the circumstances of the instant application and finds no compelling reason to vary those conditions as suggested by the Defence. It is not for a witness to dictate to the Tribunal the conditions under which he or she is willing to be interviewed, but rather for the Chamber to ensure that the fairness and transparency of the judicial process is safeguarded.

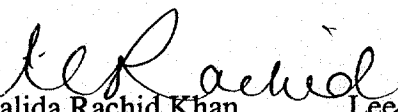
THEREFORE THE TRIAL CHAMBER

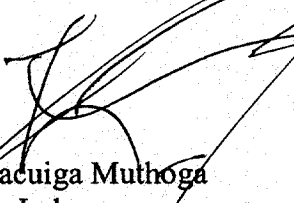
DENIES the Motion in its entirety.

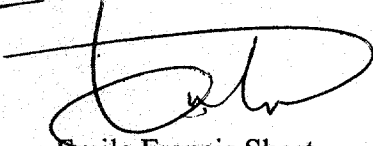
⁴ Email communication from M. Matar Diop, Deputy Chief, Court Management Section to Mr. Chile Eboe-Osuji, Senior Legal Officer, Chambers Support Section, 17 January 2005.

⁵ *Response*, para.5-6

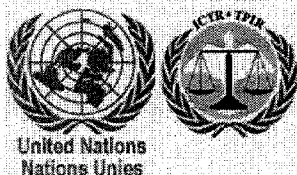
Arusha, 19 January 2005


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge

20123

Emile Francis Short
Judge





TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

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From:	<input checked="" type="checkbox"/> Chamber II Will Romans (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Casimir Bizimungu et al.			Case Number: ICTR-99-50-T
Dates:	Transmitted: 19 January 2005		Document's date: 19 January 2005	
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