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Mwami



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

UNITED NATIONS
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TRIAL CHAMBER II

Before Judge: Laïty Kama, presiding
Designated by the Chamber pursuant to Rule 73
of the Rules of Procedure and Evidence

Registry: John Kiyeyeu

Date filed: 16 February 2000

THE PROSECUTOR

v.

SYLVAIN NSABIMANA

JUDICIAL HISTORY SERVICES
2001 SEP 21 A 9:08
ICTR

**DECISION ON THE DEFENCE MOTION FOR DISCLOSURE OF ALL
MATERIALS THE PROSECUTION INTENDS TO USE AT TRIAL**

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16

Translation certified by LCSS, ICTR

NSABI(C)01-015 (E)

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (“THE TRIBUNAL”)

Sitting in the person of Judge Laïty Kama, Presiding Judge of a Chamber, designated by Trial Chamber II of the Tribunal, pursuant to the provisions of Rule 73 of the Rules of Procedure and Evidence (the “Rules”);

Seized of a Defence Motion dated 16 July 1999, in *The Prosecutor v. Sylvain Nsabimana*, seeking disclosure of all materials the Prosecution intends to use at trial, pursuant to the provisions of Rule 66 (B) of the Rules of Procedure and Evidence (the “Rules”);

Having considered the Prosecutor’s reply to said motion, dated 25 November 1999, but which was received by the Chamber and the Defence only on 9 February 2000;

Having heard the parties to the motion at the hearings of 9 and 10 February 2000;

Submissions of the parties

1. The Defence submits in the main that the Prosecutor has in her possession materials that may well be used by the Prosecution as evidence against the Accused and which the Defence deems material to the preparation of an effective defence. Pursuant to the provisions of Rule 66 (B) of the Rules, the Defence prays the Chamber to order as follows:

1.1. That the Prosecutor disclose to the Defence such documents, photographs and other tangible objects seized in the *préfecture* and region of Butare relating to the proceedings against Nsabimana or the co-accused, as indicated in the Prosecutor’s motions seeking both leave to amend the indictment and joinder of the accused and in their supporting briefs;

1.2. That the Prosecutor disclose to the Defence all the documents recorded in the three tables annexed to the present Defence Motion (attachments A, B, C), after the Prosecutor’s response as to the authenticity of the said tables and documents;

1.3. That the Prosecutor disclose to the Defence all the documents the Prosecutor intends to use in the proceedings against Nsabimana or the co-accused;

1.4. That such disclosure be by means of an official record established in the presence of both parties, enumerating all the documents, photographs and other tangible objects made available to the Defence;

1.5. That the Prosecutor be given 30 days, from the date of the decision to be rendered by the Chamber, to make the said disclosure;

1.6. That failure by the Prosecutor to comply with the time-limit indicated above, the Prosecutor will be denied the use against Nsabimana or the co-accused of the said documents, photographs and other tangible objects not previously disclosed.

2. The Prosecutor objects to the Defence Motion. Relying on a decision rendered on 16 April 1998 by Trial Chamber II in *The Prosecutor v. Elie Ndayambaje* (Case No. ICTR-96-8-T), she submits that the provisions of Rule 66 (B) stipulate three requirements governing the Prosecutor’s obligation to disclose documents to the accused: (1) The materiality of the documents to the preparation of the defence; (2) The intention of the Prosecutor to use such evidence at trial; (3) That such materials were obtained from or belonged to the accused.

4629

3. In the main, the Prosecutor submits that the Defence Motion is unfounded because it does not take into account the fact that disclosure is an on-going process, that the Prosecutor has fulfilled and continues to fulfil her disclosure obligations, at her own pace. The Prosecutor contends that the Defence is mistaken about the disclosure obligation referred to in Rule 66 (A) and the inspection provided for in Sub-Rule (B) of the same Rule. Lastly, the Prosecutor states that the Defence Motion is not based on facts, since the list of documents in the custody of the Prosecutor, as submitted by the Defence, is neither authentic nor verified.

4. Moreover, at the hearing and in reply to the Tribunal's questions, the Prosecutor submitted on the one hand that she had some documents in her possession and could disclose them to the Defence, and on the other hand that she intended to comply with her duty to disclose on her own time-table without submitting to what she referred to as the "diktat" of the Defence.

After having deliberated

5. The Chamber recalls that Rule 66 (B) of the Rules reads as follows:

"At the request of the Defence, the Prosecutor shall, subject to Sub-Rule(C), permit the Defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the Accused".

6. First of all, the Chamber finds that the Prosecutor explicitly admits having in her possession documents that may well be used by the Prosecution as evidence against the Accused, which documents the Defence deems material to the preparation of an effective defence.

7. The Chamber notes that the Prosecutor did not apply to the Chamber, pursuant to the provisions of Rule 66 (C) of the Rules to be relieved in the instant case of the obligation provided under Sub-Rule (B) of the said Rule.

8. The Chamber observes that although Rule 66 (C) of the Rules provides that the Prosecutor shall permit the Defence to inspect any books, documents, photographs and tangible objects in her custody, the Prosecutor should not only permit the Defence to inspect them, but should also, as much as possible, provide the Defence with certified copies thereof. The Chamber points out in this respect that said Rule 66 (C) refers to *"the obligation to disclose pursuant to Sub-Rules (A) and (B)"*.

9. As for the Chamber, it is necessary in the instant to order the Prosecutor, pursuant to the provisions of Rule 66 (B), to permit the Defence to inspect any materials the Defence has requested, which are in the custody or control of the Prosecutor, and are material to the preparation of the defence of the accused.

10. Moreover, as the adversary system requires that the Prosecutor effect disclosure to the Defence within a reasonable period so as to enable the Defence to prepare all the evidence it intends to rely on at trial, the Chamber holds that the Prosecutor should permit the Defence to inspect all such materials as soon as possible and cannot argue that she intends to comply with her duty of disclosure on her own time-table.

11. In this respect, the Chamber is of the opinion, as underscored by the Defence, that the Prosecutor should promptly comply with all the obligations set forth under Rule 66 of the Rules, so

that there may be no violation of the rights of the accused to be tried without undue delay and to have adequate time and facilities for the preparation of his Defence, as provided for under Article 20 of the Statute.

12. Finally, the Chamber holds that, barring a specific authorization granted under Rule 66, any possible evidential material requested by the Defence that the Prosecutor would not have disclosed previously to the Defence pursuant to the provisions of Rule 66 would not be used by the Prosecutor at trial.

For the foregoing reasons

The Tribunal

Orders the Prosecutor, pursuant to the provisions of Rule 66(B), to permit the Defence to inspect any books, documents, photographs and tangible objects in her custody or control which are material to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused,

Further Orders the Prosecutor to permit the Defence to inspect all documents as soon as possible,

Finds that, in the absence of a specific authorization from the Chamber granted to the Prosecutor under Rule 66(C), any of the aforementioned material that the Prosecutor would not have disclosed previously to the Defence pursuant to the provisions of Rule 66, cannot be used against Sylvain Nsabimana at trial.

Arusha, 16 February 2000

(Signed)
Laïty Kama
Presiding Judge of the Chamber

(Seal of the Tribunal)


