

2084/H



**International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda**

IN THE APPEALS CHAMBER

Before: Judge Claude JORDA, Presiding
Judge Lal Chand VOHRAH
Judge Mohamed SHAHABUDEEN
Judge Rafael NIETO-NAVIA
Judge Fausto POCAR

Registrar: Mr. Adama DIENG

Decision of: 22 May 2001

ICTR Appeals Chamber
Date: 22 May 2001
Action:
Copied To: All Judges, A.Ds,
Judicial Archives & Parties
MD [Signature]

ICTR-96-13-A
22 MAY 2001
(2084/H - 2081/H)

Alfred MUSEMA
(Appellant)

v.

THE PROSECUTOR
(Respondent)

Case No. ICTR-96-13-A

DECISION

(EXTREMELY URGENT MOTION FOR PROTECTIVE MEASURES FOR WITNESSES)

Counsels for the Appellant

M. Steven KAY Q.C.
M. Michail WLADIMIROFF
Ms Sylvia de BERTODANO

Counsel for the Prosecution

M. Solomon LOH

JUDICIAL RECORDS ARCHIVES
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2083/H

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (“the Appeals Chamber” and “the Tribunal” respectively),

NOTING the Judgement and Sentence of Trial Chamber I dated 27 January 2000 (“the Judgement and Sentence”) in the case of *The Prosecutor v. Alfred Musema* (“the Appellant”), and that there is currently an Appeal before the Appeals Chamber relating to that case;

NOTING the “Defence Motion Under Rule 68 Requesting the Appeals Chamber to Order the Prosecution to Disclose Exculpatory Material in its Possession to the Defence; And for Leave to File Supplementary Grounds of Appeal” filed by the Appellant before the Appeals Chamber on 19 April 2001 (“the Defence Motion Under Rule 68”);

NOTING the “Notification of Intention to Disclose Three Witness Statements to Counsel for the Appellant” filed on 17 May 2001, in which the Prosecution has put the Appellant and the Appeals Chamber on notice that it intends to disclose three witness statements to Counsel for the Appellant as soon it has been ensured that the transmission of the said statements will not infringe witness protection issued by Trial Chambers in other cases;

NOTING the *ex parte* “Extremely Urgent Motion for Protective Measures for Witnesses” filed before the Appeals Chamber by the Prosecution on 21 May 2001 (“the Prosecutor’s Extremely Urgent Motion”), in which the Prosecution submits *inter alia* that:

- (1) Three witness statements were disclosed to Counsel for the Appellant on 18 May 2001;
- (2) The first witness statement was disclosed in its entirety;
- (3) The other two witness statements, attached to the Motion as Annex A1 and A2, were transmitted to Counsel for the Appellant in redacted form to protect on-going investigations and to protect witnesses which are not currently subject to any witness protection measures;
- (4) The portions of these statements which are redacted refer either to events that are immaterial for the purpose of Rule 68 or are related to the identity of the witnesses;
- (5) At the time of disclosing the statements, there were no protective measures in place;

NOTHING that for those reasons and because the Prosecution has reasons to believe that statements disclosed in cases before the Tribunal are being circulated among inmates in the

2082/H

Tribunal's Detention Facility¹, the Prosecution is seeking protective measures in relation to those two witnesses;

NOTHING that assuming that such measures are granted, the Prosecution affirms that it will thereafter immediately disclose the identity and identifying information of the two witnesses to the Appellant;

RECALLING that the Rules 69 and 107 of the Rules of Procedure and Evidence ("the Rules") stipulated that, in exceptional circumstances, either of the parties may apply to the Appeals Chamber to order the non-disclosure of the identity of witnesses who may be in danger or at risk;

RECALLING the Rules 75 and 107 of the Rules stipulating that the Appeals Chamber may, at the request of either party, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused;

FOR THESE REASONS

HEREBY GRANTS the Prosecutor's Extremely Urgent Motion and **ORDERS AS FOLLOWS:**

1. That the names, addresses, whereabouts of and other identifying information concerning the witnesses whose statements are enclosed in the Annex A1 and A2 to the Prosecutor's Motion be sealed by the Registry and not included in any public records of the Tribunal;
2. That to the extent that any names, addresses, whereabouts of and other identifying information concerning the witnesses are contained in existing Tribunal or public records, those names, addresses, whereabouts of and other identifying information concerning the witnesses whose statements are enclosed in the Annex A1 and A2 to the Prosecutor's Motion shall be expunged from those documents;
3. That the names, addresses, whereabouts of and any other identifying or any other information which could reveal the identities of the witnesses whose statements are enclosed in the Annex A1 and A2 to the Prosecutor's Motion shall not be disclosed to the public or the media, except such limited disclosure by Appellant's Counsel and any representatives acting pursuant to their instructions or request, to individual members of the public, which is necessary in order to prepare the appeal, required that such limited disclosure be done in such a way as to minimise the risk of the information being divulged further;

¹ The Prosecution refers to the Defence Motion Under Rule 68 in which the Counsel of the Appellant has admitted that his client has furnished him with a statement disclosed in the case *The Prosecutor v. Ntakirutimana*, despite the fact the said statement is subject to a non-disclosure order by the Trial Chamber I.

208114

4. That if the Appellant's Counsel finds it specifically necessary to disclose such information for the preparation and presentation of this case, Counsel shall inform each person to whom such disclosure is made that such person is not to copy, reproduce or publicise such statement and is not to show or disclose it to any other person. This applies specifically to the Appellant;
5. That no photograph, video recording or sketch shall be made of the witnesses whose statements are enclosed in the Annex A1 and A2 to the Prosecutor's Motion at any time or place without leave of the Appeals Chamber and parties;
6. That Counsel for the Appellant shall notify the Prosecutor of any requested contact with the witnesses whose statements are enclosed in the Annex A1 and A2 to the Prosecutor's Motion, and that the Prosecutor, with the necessary assistance from the Witness and Victims Protection Unit, shall make arrangements for such contact if the person in question consents;
7. That the Registrar designate pseudonyms for the witnesses whose statements are enclosed in Annex A1 and A2 to the Prosecutor's Motion and those pseudonyms shall be used whenever referring to each witness in proceedings before the Appeals Chamber, communications and discussions between the Parties to the Appeals and the public.

Done in both English and French, the English text being authoritative.



Claude Jorda,
Presiding Judge

Dated this 22nd day of May 2001
At The Hague, The Netherlands

