

ICTR-98-42-T
26-3-2002
(6382-6379)

6382
Mudiny



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: Eng

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Winston C. Matanzima Maqutu
Judge Arlette Ramaroson

Registrar: Adama Dieng

Date: 26 March 2002

RPN

JUDICIAL RECORDS DIVISION
RECEIVED
ICTR

2002 MAR 26 A 10: 24

The PROSECUTOR v.

Arsène Shalom NTAHOBALI and Pauline NYIRAMASUHUKO
Case No. ICTR-97-21-T

(Case No. ICTR-98-42-T)

**DECISION ON DEFENCE MOTIONS FOR DISCLOSURE OF INFORMATION
ON THE COVERSHEETS OF PROSECUTION WITNESS STATEMENTS**

Office of the Prosecutor

Sylvana Arbia
Japhet D. Mono
Jonathan Moses
Gregory Townsend
Adesola Adeboyejo
Manuel Bouwknecht

Defence Counsel for Ntahobali

Duncan Mwanyumba
Normand Marquis

Defence Counsel for Nyiramasuhuko

Nicole Bergevin
Guy Poupart

Handwritten signature

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

SITTING as Trial Chamber II composed of Judge William H. Sekule, Presiding, Judge Winston C. Matanzima Maqutu and Judge Arlette Ramaroson (the “Chamber”);

BEING SEIZED OF the “Requête de Arsène Shalom Ntahobali et Pauline Nyiramasuhuko en communication de preuve supplémentaire et en précision ou révision partielle de la Décision rendue le 25 septembre 2001,”¹ filed on 1 March 2002 (“Ntahobali’s & Nyiramasuhuko’s Joint Motion”);

CONSIDERING the “Prosecutor’s Reply to Ntahobali’s & Nyiramasuhuko’s Joint Motion for Review of the Decisions on Disclosure of the Coversheets, and Response to Kanyabashi’s *Réplique*,” filed on 5 March 2002;

NOTING the “Decision on Defence Motions for *Inter Alia* Disclosure of Information on the Coversheets of Prosecution Witness Statements” rendered on 8 March 2002 in the “Butare Cases”, (“Decision on Disclosure of Information on the Coversheets of Prosecution Witness Statement of 8 March 2002”);

CONSIDERING the Statute and the Rules of Procedure and Evidence (the “Rules”), specifically Rules 66(A) (ii), 69 and 75 of the Rules;

NOW DECIDES the Motions on the basis of the written briefs only pursuant to Rule 73 (A) of the Rules;

SUBMISSIONS OF THE PARTIES

The Defence

1. Counsel for Ntahobali and Nyiramasuhuko argue that, by disclosing only part of the information on the identifying coversheets of the witness statements, the Prosecution violates its disclosure obligations and the Accused’s right to a fair trial pursuant to Article 20(2) of the Statute.
2. The Defence submit that, in addition to the information already disclosed on the coversheets, the Prosecution is under an obligation to disclose the following information:
 - a) Present occupation of the witness;
 - b) Father’s and mother’s names;
 - c) Marital status;
 - d) Membership in a social association or political party;

¹ Unofficial translation of the title of the Motion: “Nyiramasuhuko and Ntahobali’s Motion for Further Disclosure and for Clarification or Partial Revision of the Decision of 25 September 2001.”



- e) Name and address of a contact, friend, relative or other.
5. The Defence argue that the Prosecution's submissions concerning the protection of witnesses are not applicable to the case of detained witnesses, who are under the constant control of the authorities and that other witnesses have already openly testified in Rwanda without protective measures.
 4. In addition to the submissions made by Counsel for Kanyabashi in its Motion for, *inter alia*, disclosure and revision of the 25 September 2001 Decision, the Defence submit in the instant proceedings that, by using the word *notamment* ("notably") in its Decision of 8 June 2001, the Chamber did not intend to limit the disclosure of information on the coversheet to the enumerated examples only.
 6. Finally, the Defence submit that no decision either explicitly granted the aforementioned requested information or dismissed the information requested on the coversheets of the witness statements.
 7. Accordingly, the Defence request that the Prosecution be ordered to disclose, within five days, all information contained on the coversheet of the witness statement with the exception of his or her current address; and to clarify or revise the 25 September 2001 Decision in regard to the place where each statement was taken without indicating the witness's current address.

The Reply by the Prosecution

9. The Prosecution recalls that the Defence have already moved for disclosure of all information contained on the coversheets of the witness statements but that, in its first Decision dated 8 June 2001, the Chamber granted only partial disclosure of ten items of information.
8. The Prosecution indicates that the Defence Motions implicitly requested: names of the witnesses' parents, marital status, residence outside Rwanda, present job, political or other organisational affiliation, the name and contact information of a contact person or family member of the witness. The Prosecution maintains that the Chamber did not grant disclosure of these items of information sought by the Defence.
10. The Prosecutor further submits that the Tribunal has not ordered the disclosure of any information on the coversheets in several cases pending before Trial Chamber II and Trial Chamber III.
11. Consequently, the Prosecution submits that the Motion should be dismissed as it is an inadmissible attempt to re-open and re-litigate the Tribunal's Decisions on disclosure of certain portions of the coversheets of witness statements and is, as such, a disguised appeal of the three aforementioned decisions which are *res judicata*.



HAVING DELIBERATED,

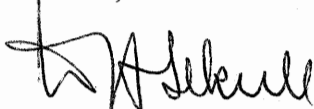
23. The Chamber notes that the Defence for Nyiramasuhuko and Ntahobali raise similar issues concerning the disclosure of information on the coversheets of Prosecution witness statements as raised by Counsel for co-Accused Nteziryayo and Kanyabashi in their respective Motions filed on 30 January 2002 and 18 February 2002.
24. The Chamber recalls its recent "Decision on Disclosure of Information on the Coversheets of Prosecution Witness Statement" rendered on 8 March 2002 subsequent to the filing of Motions by Nteziryayo and Kanyabashi, in which it decided:

Recalling the Decisions of 8 June 2001 and 25 September 2001 concerning the list of specific items of information to be disclosed by the Prosecution, the Chamber finds that the scope of disclosure on the coversheets of the Prosecution witness statements has been adjudicated. The Chamber ordered that specific information be disclosed on the said coversheets: the name(s) of the witness, his or her date and place of birth, his or her religion, nationality and ethnic origin, his or her residence and profession at the time of the events about which he or she is to testify, the languages spoken and written by him or her, the signature of the witness, the name of the investigator and the interpreter having conducted the interview, the date(s) of the statement(s), and, the language(s) used when the statement was taken. Conversely, the Chamber's orders thereby excluded any other information requested. Furthermore, the Chamber is not convinced by the Defence's arguments requesting disclosure of additional information on the coversheets of the Prosecution witness statements.

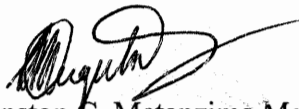
33. In this "Decision on Disclosure of Information on the Coversheets of Prosecution Witness Statement" rendered on 8 March 2002, the Chamber dismissed the Defence request for clarification or revision of the Decision on disclosure 25 September 2001.
34. In the instant case, the Defence for Nyiramasuhuko and Ntahobali raise issues which the Chamber has already adjudicated in the aforementioned Decision of 8 March 2002. Accordingly, the Chamber refers the Parties to the said Decision.

FOR THE AFOREMENTIONED REASONS, THE TRIBUNAL,**DISMISSES** the Defence's Motion.

Arusha, 26 March 2002



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramarason
Judge

[Seal of the Tribunal]