



ICTR-98-42-T
27-3-2002
(6386-6383)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

6386
Mugabo

OR: ENG

TRIAL CHAMBER II

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

Registrar: Adama Dieng

Date: 27 March 2002

AD

JUDICIAL RECORDS DIVISION
ICTR
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2002 MAR 27 A 11: 14

The PROSECUTOR v. Élie NDAYAMBAJE
Case No. ICTR-96-8-T
The PROSECUTOR v. Joseph KANYABASHI
Case No. ICTR-96-15-T
The PROSECUTOR v. Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI
Case No. ICTR-97-21-T
The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO
Case No. ICTR-97-29-T
(Case No. ICTR-98-42-T)

DECISION ON THE PROSECUTOR'S MOTION TO STAY DISCLOSURE
UNTIL PROTECTION MEASURES ARE PUT IN PLACE

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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 Ramarosan, (the “Chamber”);

BEING SEIZED of the “Prosecutor’s Extremely Urgent Motion to Stay Disclosure until Protection Measures Are Put in Place,” filed on 30 January 2002 (the “Motion”);

CONSIDERING

- (i) The “Réponse à la Requête du Procureur aux fins de sursis à la communication des pièces,” filed by the Defense for Kanyabashi on 6 February 2002 (“Kanyabashi’s Response”);
- (ii) The “Réplique à la Requête du Procureur en extrême urgence aux fins de sursis à communication jusqu’à ce que des mesures de protection soient mises en place,” filed by the Defense of Nteziryayo on 6 March 2002 (“Nteziryayo’s Response”);
- (iii) The “Prosecutor’s Reply on her Motion to Stay Disclosure until Protection Measures Are Put in Place,” filed on 11 March 2002 (the “Prosecutor’s Reply”);

NOTING the “Temporary Order on the Prosecutor’s Urgent Motion to Stay Disclosure,” of 31 January 2002, which ruled *inter alia* that, “[t]he operation of the Order of 13 November 2001 for the full disclosure of unredacted statements in respect of the 11 witnesses mentioned in the Motion be suspended pending the hearing and finalization of this Motion,” (the “Temporary Order of 31 January 2002”);

CONSIDERING the Statute of the Tribunal (the “Statute”) specifically Article 21, and the Rules of Procedure and Evidence (the “Rules”), in particular Rules 54, 73, 69 and 75;

NOW DECIDES the Motion after having heard the Parties on 15 March 2002.

SUBMISSIONS OF THE PARTIES

The Prosecutor’s Submissions

1. The Prosecutor submits that, in compliance with the Chamber’s Decision of 13 November 2001, she has fully disclosed the non-redacted witness statements for those witnesses for whom protective measures were established by the Witness and Victims Support Section (the “WVSS”).¹ However, considering the Chamber’s Temporary Order of 31 January 2002, the Prosecutor has not disclosed the non-redacted statements for ten Prosecution witnesses, i.e., RN, SF, QC, QF, SP, SR, RB, TE, SY and QAP, who were not yet under the protection of the Tribunal. At the hearing, the Prosecutor clarified that her disclosure to the Defense of the non-redacted statements of witness ST was made on or before 31 January 2002.

¹ See *Prosecutor v. Nyiramasuhuko et al* “Decision on the Defense Motions by Nyiramasuhuko, Ndayambaje and Kanyabashi on, *inter alia*, Full Disclosure of Unredacted Prosecution Witness Statements,” of 13 November 2001, Case no. ICTR-98-42-T (herein referred to as the “Decision of 13 November 2001.”)

2. The Prosecutor thus moves, pursuant to Article 21 of the Statute and Rules 54, 73, 69 and 75 of the Rules, for a reasonable extension of the Chamber's Order of 13 November 2001 for disclosure of the non redacted statements of the aforementioned ten Prosecution witnesses. The Prosecutor informed the Chamber that she could not specify the length of time she envisioned for the extension. The Prosecutor maintains that she is making all efforts to ensure that these witnesses are placed under the Tribunal's protection if they agree to testify and/ or can be located. Alternatively, the Prosecutor submits that she will fully comply with the Chamber's 13 November 2001 Decision and disclose non-redacted statements for the ten witnesses, even if protective measures have not been put in place.

3. The Prosecutor submits that the requested extension for the disclosure of the non-redacted statements of the ten witnesses is in the interests of justice and will not materially prejudice the Defense. To afford the Defense ample time for preparation of their case, the Prosecutor submits that she will schedule the hearing for these witnesses during the last session of her case in chief.

Defense Submissions

4. In objecting to the Motion, the Defense for Kanyabashi argues *inter alia* that the WVSS has been in possession of the names and addresses of 103 Prosecution witnesses since June 2001 and, accordingly has had sufficient time to locate and provide protective measures for all witnesses. Furthermore, the Defense reminds the Chamber of the length of the Accused' detention prior to commencement of trial and argues that the rights of the Accused to a trial without undue delay is likely to be violated if the Motion is granted.

5. The Defense for Nteziryayo submits that, as reported on 29 January 2002 by WVSS, some of the witnesses in question refuse to testify others refuse to cooperate with the Tribunal and still others cannot be located. The Defense thus argues that it is not possible to compel witnesses to testify and that the witnesses whose whereabouts are unknown may even be dead. The Defense argues that the brief extension of time sought by the Prosecutor in order to persuade and to find said witnesses may be futile. (emphasis theirs)

6. The Defense therefore requests that the Motion be dismissed and that the deadline set in the Decision of 13 November 2001 regarding disclosure of all the non-redacted witness statements be maintained. The Defense also requests that the Chamber order the deletion of the ten witnesses for whom disclosure was not timely made, from the Prosecution's list of witnesses to be called to testify in this case.

HAVING DELIBERATED

7. The Chamber recalls its Decision of 13 November 2001, in which it ordered, "(1) the Witness and Victims Support section (WVSS) to provide protective measures for all remaining Prosecution witness at the latest by 29 January 2002, and (2) the Prosecutor to disclose the non-redacted witness statements of all remaining witnesses as soon as WVSS puts protective measures in place and, in any event, by the latest on 31 January 2002."

8. According to the Memorandum of 11 March 2002 from the Chief of WVSS, eleven Prosecution witnesses still remain unprotected because: (1) RN refuses to cooperate with the Tribunal and is refusing to meet with our officers, (2) SF is sick and not fit to travel, and is not willing to testify (3) QC claims his evidence is hearsay, is not willing to testify or

cooperate (4) QAP has refused to testify and has informed that she is not willing to go to Arusha, (5) SY is sick with chronic health problems, and states is unfit to travel and does not want to testify (6) SR has had a spinal operation and has just begun to walk and is unwilling to testify or go to Arusha (7) TE refuses to testify on the ground that she did not witness anything and is totally unwilling to go to Arusha (8) QF is unwilling to cooperate with the Tribunal, (9) RB is not willing to cooperate with the Tribunal and (10) ST is unwilling to testify. The WVSS also report that Witness SP has not been located to date. As ordered by the Chamber in its Temporary Order of 31 January 2001, the Prosecutor has not disclosed to the Defense the non-redacted statements for ten of the said witnesses.

9. The Prosecutor submits that she intends to locate the witness and to contact the other nine witnesses in an attempt to persuade them to testify before the Tribunal. The Prosecutor argues that, when this has been accomplished, the WVSS will be in a position to put the ten witnesses under the protection of the Tribunal so that the Prosecutor may fully disclose to the Defense their non-redacted statements.

10. The Chamber reiterates its ruling in the Decision of 13 November 2001 that, "[t]he disclosure of witness statements pursuant to Rule 66(A)(ii) is intended to assist the Defense in its understanding of the case." The Chamber notes that, during the period of suspension of the Order of 13 November 2001, the Prosecutor has located all except one of the ten witnesses. However the WVSS has not been able to implement protective measures for those witnesses located to date for the reasons given. In seeking extension, the Prosecutor has not been able to indicate to the Chamber the duration of the requested extension. It is therefore the Chamber's opinion that it would not be in the interests of justice to grant the Prosecutor's indefinite request. The Chamber thus denies the Motion.

11. Accordingly since the non-redacted statements of the ten witnesses have not been filed with the Defense, the Chamber orders the deletion of witnesses RN, SF, QC, QF, SP, SR, RB, TE, SY and QAP from the Prosecutor's list of witnesses.

FOR THE ABOVE REASONS, THE TRIBUNAL,

DENIES the Prosecutor's Motion;

ORDERS the deletion of witnesses RN, SF, QC, QF, SP, SR, RB, TE, SY and QAP from the Prosecutor's list of witnesses.

Arusha, 27 March 2002



William H. Sekule
Presiding Judge



Winston C. Matanzima Maqutu
Judge



Arlette Ramaroson
Judge

[Seal of the Tribunal]