



ICTR-98-44A-T
08-03-2004
(3581 — 3579)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before: Judge William H. Sekule, Presiding
Judge Asoka de Zoysa Gunawardana
Judge Arlette Ramaroson

Registrar: Mr. Adama Dieng

Date: 8 March 2004

The PROSECUTOR

v.

Juvénal KAJELIJELI

Case No. ICTR-99-44A-T

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**DECISION ON JOSEPH NZIRORERA'S THIRD MOTION FOR DISCLOSURE OF
TESTIMONY AND EXHIBITS**

Office of the Prosecutor
Ms. Ifeoma Ojemeni

Counsel for the Defence of Kajelijeli
Prof. Lennox Hinds
Prof. Nkeyi Makanyi Bompaka

Counsel for the Defence of Nzirorera
Mr. Peter Robinson
Ms. Dior Diagne

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

SITTING as Trial Chamber II composed of Judges William H. Sekule, Presiding, Asoka de Zoysa Gunawardana and Arlette Ramaroson (the "Chamber");

BEING SEIZED of "Joseph Nzirorera's Third Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal," filed on 22 December 2003 (the "Motion") in which:

- (i) the Defence for Joseph Nzirorera requests the Prosecution to disclose the testimony and exhibits of witness GAO who was a Prosecution Witness in the case of the *Prosecutor v. Kajelijeli* because the said witness would be called during the second trial session of the trial of the Accused Nzirorera; and
- (ii) the Defence for Joseph Nzirorera and its Team undertakes to be bound by the same protective measures as the Kajelijeli Defence team with respect to the testimonies and exhibits received pursuant to the Motion;

CONSIDERING that the Prosecution filed a belated Response on 24 February 2004 in which it does not object to the request of Joseph Nzirorera since he and his Defence Team have undertaken to be bound *mutatis mutandis* by the Decision for the protection of Witnesses of 6 July 2000 relating to the Prosecution witnesses in the *Prosecutor v. Kajelijeli* case;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 54, 75, 66(A) and 81(B) of the Rules;

NOW DECIDES the Motion solely on the basis of the written briefs filed by the Defence pursuant to Rule 73(A) of the Rules.

HAVING DELIBERATED

RECALLING its "Decision on the Prosecutor's Motion for Protection Measures for Witnesses," of 6 July 2000 in the case of the *Prosecutor v. Kajelijeli* (the "Decision for the protection of Witnesses of 6 July 2000");

RECALLING FURTHER the jurisprudence of the Tribunal¹ and in particular the Chamber's "Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received under Seal," of 7 October 2003 whereby the Chamber granted the request of Counsel for Nzirorera instructing said Counsel and his team that they have to comply with the orders made in the Chamber's Decision for the protection of Witnesses of 6 July 2000;

¹ *Bagosora et al.*, Decision on Release of Closed Session Transcript of Witness DY for Use in the Trial of Bizimungu et al (TC), 23 February 2004; *Niyitegeka*, Decision on Release of Closed Session Transcript of Witness KJ for Use in the Trial of Bagosora et al. (TC), 17 February 2004; *Ntakirutimana*, Decision on Release of Closed Session Transcript of Witness OO for Use in the Trial of Bagosora et al. (TC), 17 February 2004; *Musema*, Decision on Release of Closed Session Transcript of Witness AB for Use in the Trial of Bagosora et al. (TC), 18 February 2004; *Bagosora et al.*, Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony of Witness ZF (TC), 11 November 2003; *Nahimana et al.*, Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 5 June 2003; *Niyitegeka*, Decision on the Defence Motion for Release of Closed Session Transcript of Witness KJ (TC), 23 June 2003;

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CONSIDERING that in its "Decision on Disclosure of Evidence" of 1 November 2000 in the case of *Prosecutor v. Nyiramasuhuko*, the Chamber was of the opinion at para. 32 that, "As regards Rule 66 (A) (ii) of the Rules, we consider that each of the Accused in the same proceedings must receive disclosure of the statements of all the witnesses whom the Prosecutor intends to call at their joint trial, so that the Defence of each of the Accused may be in a position to prepare their Defence and in particular to fully cross-examine the witnesses of its choice, in the course of the hearing." The Chamber is mindful that Nzirorera is jointly tried with three other Accused. Although the other Accused have not requested such disclosure, the Chamber rules that should any Accused ask for the transcripts and exhibits of Witness GAO, the Accused and their Defence Team should be provided with the said transcripts and exhibits and would be bound by the same orders made for Nzirorera.

ACCORDINGLY the Chamber grants the Defence request and orders the Registry to disclose to the Defence of Nzirorera the testimony and exhibits relating to Prosecution Witness GAO while reminding the Defence to preserve the confidentiality of the said testimony and exhibits under all circumstances and in compliance with the protective measures made in the Chamber's Decision for the protection of Witnesses of 6 July 2000;

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the request of Counsel for Nzirorera instructing Counsel for Nzirorera as well as any Counsel for the Co-Accused and their teams that they are under strict orders to comply with the Chamber's Decision for the Protection of Witnesses of 6 July 2000; and

ORDERS the Registry to disclose to the Defence Team of Nzirorera and any other Defence Teams of his Co-Accused the testimony and exhibits relating to Witness GAO while reminding these Defence teams to preserve the confidentiality of the said testimony and exhibits under all circumstances and in compliance with the protective measures made in the Chamber's Decision of 6 July 2000.

Arusha, 8 March 2004



William H. Sekule
Presiding Judge



Asoka de Zoysa Gunawardana
Judge



Arlette Ramaroson
Judge

(Seal of the Tribunal)