



ICTR-99-52-T
15-03-2004
(34944 - 34942)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

34944
J. Musingu

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 15 March 2004

THE PROSECUTOR

v.

FERDINAND NAHIMANA
JEAN-BOSCO BARAYAGWIZA
HASSAN NGEZE
Case No. ICTR-99-52-T

2004 MAR 15 P 3:05
J. Musingu

**DECISION ON THE JEROME BICAMUMPAKA AND PROSPER MUGIRANEZA
URGENT MOTION FOR DISCLOSURE OF CLOSED SESSION TESTIMONY AND
EXHIBITS FOR WITNESS LAG**

Office of the Prosecutor

Mr Stephen Rapp
Ms Charity Kagwi-Ndungu

The Defence in *Bizimungu et al.*

Pierre Gaudreau
Tom Moran

J. Musingu

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

SITTING as Trial Chamber I, composed of Judge Erik Møse, designated by the Trial Chamber, pursuant to Rule 73 of the Rules of Procedure and Evidence of the Tribunal (“the Rules”);

BEING SEIZED of the “Jérôme Bicomumpaka and Prosper Mugiraneza Urgent Motion for Disclosure of Closed Session Testimony and Exhibits for Witness LAG”, filed on 8 March 2004;

CONSIDERING the “Prosecutor’s Response”, filed on 10 March 2004;

HEREBY DECIDES the motion.

SUBMISSIONS

1. The Defence for the Accused, Jérôme Bicomumpaka and Prosper Mugiraneza, in the case of *Prosecutor v. Bizimungu et al.*, being heard before Trial Chamber II, request disclosure of transcripts of closed session testimony and access to exhibits under seal of a protected witness, Witness LAG, who appeared at the trial of *Prosecutor v. Nahimana et al.* The Defence submit that they need the material in order to effectively cross-examine that witness when he appears as Prosecution Witness GTA in the trial of *Bizimungu et al.* The Defence also request access to the judicial records of Witness LAG obtained by the Prosecution in *Nahimana et al.*
2. The Prosecution has no objections to the motion save to urge the compliance of Defence with the protective measures ordered in respect of its Prosecution witnesses in *Nahimana et al.*, including Witness LAG. However, the Prosecution notes that the Accused, Bicomumpaka and Mugiraneza, were not mentioned by Witness LAG in closed session or sealed exhibits. Regarding the judicial records, the Prosecution submits that these were never obtained from the Rwandan Government.

DELIBERATIONS

3. The Defence’s references, in the motion, to another pseudonym, AHI, are erroneous, as Witnesses LAG and AHI were two different witnesses who appeared in the trial of *Nahimana et al.* It is Witness LAG who testified on 30 August and 3 and 4 September 2001, and whose judicial records were requested by the Defence in *Nahimana et al.*
4. The motion was filed on 8 March 2004 and the response was filed on 10 March 2004. In between the filing of these documents, the witness testified, on 9 and 10 March 2004, as Prosecution Witness GTA in *Bizimungu et al.* Although the Defence submit that the transcripts and exhibits are sought for cross-examination purposes, neither Counsel for the two Accused made reference to this motion during his testimony, and both proceeded to cross-examine the witness without requesting the transcripts or exhibits. The Defence have informed the Chamber orally that nonetheless they maintain their request. It is noted that the Defence did not, in the motion, state their willingness to be bound by the protective measures order in *Nahimana et al.*

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5. The relief requested requires modification of the *Nahimana* witness protection orders dated 23 November 1999 and 2 July 2001, to permit disclosure of the confidential material. The Trial Chamber has ongoing authority to review and modify its own decisions where appropriate. The Chamber notes that the Prosecution does not object and considers that the material requested is relevant to raising credibility issues in respect of the witness.¹ Although the Defence have not stated that they agree to be bound by the terms of the witness protection orders, the Chamber decides that any Defence team which expressly undertakes in writing filed with the Registry, on behalf of itself and the Accused represented, to be bound by the *Nahimana* witness protection orders, shall be given the protected material of Witness LAG.

6. The timing of that disclosure is to be determined by the Trial Chamber seized of the case. Upon receipt of the written undertaking described above, the Chamber authorizes the Registry to transmit the closed session transcripts of Witness LAG's testimony, and the sealed exhibits tendered during his testimony, to Trial Chamber II, for release to the Defence as it deems appropriate.

FOR THE ABOVE REASONS, THE CHAMBER

DECIDES that the transcripts of the closed session trial testimony of Witness LAG in *Nahimana et al.*, and exhibits filed under seal therewith, shall be made available to any Defence team in the case of *Bizimungu et al.* which undertakes in writing filed with the Registry, on behalf of itself and the Accused represented, to be bound by the witness protection orders of 23 November 1999 and 2 July 2001;

ORDERS that any person or party in receipt of such closed session testimony and exhibits filed under seal therewith shall be bound *mutatis mutandis* by the witness protection orders of 23 November 1999 and 2 July 2001;

ORDERS the Registry to carry out the terms of this Decision, and to otherwise continue to enforce the terms of the witness protection orders of 23 November 1999 and 2 July 2001.

Arusha, 15 March 2004



Erik Mose
Judge



¹ *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; *Kajelijeli*, Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 7 October 2003; *Bagosora et al.*, Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony of Witness ZF (TC), 11 November 2003; *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.