



ICTR-01-71-I
13-04-2004
(1638-1636)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1638
S. Muasa

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 13 April 2004

JUDICIAL RECORDS/ARCHIVES
RECEIVED
ICTR
2004 APR 13 P 3:04
S. Muasa

THE PROSECUTOR

v.

EMMANUEL NDINDABAHIZI
Case No. ICTR-2001-71-T

DECISION ON BAGOSORA'S MOTION FOR DISCLOSURE OF CLOSED
SESSION TESTIMONY AND EXHIBITS OF WITNESS DP

Office of the Prosecutor

Mr Charles Adeogun-Phillips
Mr Wallace Kapaya
Mr Peter Tafah

The Defence in *Bagosora et al.*

Mr Raphaël Constant
Mr Paul Skolnik

The Defence in *Ndindabahizi*

Mr Pascal Besnier
Mr Guillaume Marçais

S. Muasa

1631

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 “Requête de la défense de Bagosora pour communication des transcriptions à huis clos du témoignage du témoin DP ainsi que des pièces déposées sous scellés à cette occasion”, filed on 1 April 2004;

HEREBY DECIDES the motion.

SUBMISSIONS

1. The Defence for the Accused Bagosora in the case of *Prosecutor v. Bagosora et al.*, heard before Trial Chamber I, requests disclosure of transcripts of closed session testimony and access to exhibits under seal of a protected witness, Witness DP, who appeared at the trial of *Prosecutor v. Nindabahizi*, which was heard before Trial Chamber I. The Defence submits that it needs the material for the defence of its client, in particular, the testimony of Witness DP regarding the transfer of funds in the National Bank of Rwanda from Kigali to Gitarama, a subject to be testified to by both Prosecution and Defence witnesses. The Defence submits that it is willing to be bound by the witness protection decision in *Nindabahizi*.

DELIBERATIONS

2. The relief requested requires modification of the *Nindabahizi* witness protection order dated 15 September 2003, to permit disclosure of the confidential material. The Trial Chamber has ongoing authority to review and modify its own decisions where appropriate. The Chamber considers that the material requested is relevant to issues raised in respect of Bagosora in *Prosecutor v. Bagosora et al.* The Chamber follows past decisions in finding that the protected material requested may be disclosed, provided that the party to whom it is to be disclosed agrees to be bound by the terms of the witness protection decision.¹ The Chamber decides that any Defence team in that case which provides a written undertaking to the Registry, on behalf of itself and the Accused represented, to be bound by the *Nindabahizi* witness protection order, shall be given the protected material of Witness DP.

3. Upon receipt of the written undertaking described above, the Chamber authorizes the Registry to transmit the closed session transcripts of Witness DP’s testimony, and the sealed exhibits tendered during his testimony, to the Defence.

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.



FOR THE ABOVE REASONS, THE CHAMBER

1636

DECIDES that the transcripts of the closed session trial testimony of Witness DP in *Ndindabahizi*, and exhibits filed under seal therewith, shall be made available to any Defence team in the case of *Bagosora et al.* which provides a written undertaking to the Registry, on behalf of itself and the Accused represented, to be bound by the witness protection order of 15 September 2003;

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 order of 15 September 2003;

ORDERS the Registry to carry out the terms of this Decision, and to otherwise continue to enforce the terms of the witness protection order of 15 September 2003.

Arusha, 13 April 2004



Erik Møse
Judge

(Seal of the Tribunal)

