



ICTR-99-54A-T

(19-04-2004)
(1605 — 1603)

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
Designated by the Trial Chamber pursuant to Rule 73(A) of the Rules

Registrar: Mr. Adama Dieng

Date: 19 April 2004

**IN THE MATTER OF
ANDRE RWAMAKUBA'S MOTION
TO OBTAIN CLOSED SESSION TRANSCRIPTS OF WITNESS GEK**

DECISION

Office of the Prosecutor

Paul Ng'arua
Ibukunolu Babajide
Justus Bwonwonga
George William Mugwanya
Elvis Bazawule
Shyامل Rajapaksa
William Mubiru
Olivier De Schutter

Counsel for the Defence of Rwamakuba

David Hooper
Andreas O'Shea

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ATM

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

JUDGE WILLIAM H. SEKULE, sitting as a single Judge designated pursuant to Rule 73(A) of the Rules of Procedure and Evidence (the “Rules”) on behalf of Trial Chamber II which includes Judges Asoka de Zoysa Gunawardana and Arlette Ramaroson (the “Chamber”);

BEING SEIZED of the “Motion on Behalf of Dr. Andre Rwamakuba, Case No. ICTR-98-44-T, to Obtain Closed Session Transcripts of Witness GEK,” attached to which is Annex A containing a list of the closed session transcripts sought, filed on 2 April 2004 (the “Motion”) in which the Defence for Andre Rwamakuba requests the disclosure of the evidence of Prosecution Witness GEK given in closed session during the trial of *Prosecutor v. Kamuhanda* because said witness is due to testify in the trial against Rwamakuba under pseudonym GIN;

CONSIDERING that the Prosecution filed a Response on 8 April 2004 in which it does not oppose the request of Dr. Andre Rwamakuba. The Prosecution, noting the on-going duty on the Trial Chamber and all parties to ensure that witness protection and security measures emanating from witness protection decisions are observed at all times, prays the Chamber to require the Defence to make and observe a written undertaking to preserve the confidentiality of the said closed session testimony of Witness GEK under all circumstances and in compliance with the relevant witness protective decisions granted by the Chamber;

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 Parties pursuant to Rule 73(A) of the Rules.

HAVING DELIBERATED

RECALLING its Decision for the Protection of Prosecution Witnesses of 10 July 2000 in the case of the *Prosecutor v. Kamuhanda*¹;

RECALLING FURTHER the jurisprudence of the Tribunal² 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 *Décision Relative à la Requête du Procureur en Prescription de Mesures de Protection en Faveur des Témoins*, dated 7 July 2000 and filed on 10 July 2000 in Case No. ICTR-99-54A-T;

² *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 Rwamakuba 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 closed session evidence of Witness GEK, the Accused and their Defence Team should be provided with the said evidence and would be bound by the same orders made for Rwamakuba;

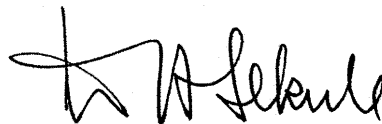
ACCORDINGLY the Chamber grants the Defence request and orders the Registry to disclose to the Defence of Rwamakuba the closed session testimony relating to Prosecution Witness GEK while reminding the Defence to preserve the confidentiality of the said testimony and exhibits under all circumstances and in compliance with the protective measures made in the Chamber’s Decision for the Protection of Prosecution Witnesses of 10 July 2000;

FOR THE ABOVE REASONS, THE TRIBUNAL

GRANTS the request of Counsel for Rwamakuba instructing Counsel for Rwamakuba 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 10 July 2000; and

ORDERS the Registry to disclose to the Defence of Rwamakuba and any other Defence of his Co-Accused the closed session testimony relating to Witness GEK while reminding the Defence to preserve the confidentiality of the said testimony under all circumstances and in compliance with the protective measures made in the Chamber’s Decision of 10 July 2000.

Arusha, 19 April 2004



William H. Sekule
Judge

