



ICTR-99-52-T
6-05-2004
(34973 - 34971)

34973
Ivan

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 6 May 2004

THE PROSECUTOR

v.

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

JUDICIAL RECORDS
101
2004 MAY -6 F 4:08

DECISION ON DISCLOSURE OF TRANSCRIPTS AND EXHIBITS OF WITNESS
EB

Office of the Prosecutor

Stephen Rapp
Barbara Mulvaney
Drew White
Segun Jegede

Counsel for the *Nahimana et al.* Defence

Jean-Marie Biju-Duval
Diana Ellis, Q.C.
John Floyd III
René Martel
Giacomo Barletta-Caldarera

Counsel for the *Bagosora et al.* Defence

Raphaël Constant
Paul Skolnik
Jean Yaovi Degli
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'omanwa

gh

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 “Motion by the Defence for Nsengiyumva for Closed Session Transcripts, Open Session Transcripts and Exhibits Tendered During the Testimony of Prosecution Witness EB”, filed on 6 April 2004;

HEREBY DECIDES the motion.

1. The Defence for Nsengiyumva in the case of *Prosecutor v. Bagosora et al.* requests disclosure of transcripts of open and closed session testimony and exhibits tendered during the testimony of protected Witness EB who appeared at the trial of *Prosecutor v. Nahimana et al.* Open session transcripts and exhibits not under seal are public documents which the Defence is able to obtain without court order. Therefore, the Chamber will only address the part of the request relating to closed session transcripts and sealed exhibits. The Defence seeks the disclosure of the material to discredit Witness OQ who testified in *Bagosora*. The Defence for Nsengiyumva agrees to abide by the protective measures orders applicable to Witness EB.
2. The relief requested requires modification of the *Nahimana* witness protection orders of 23 November 1999 and 2 July 2001, in order to permit disclosure of the requested material to the Defence. The Trial Chamber has ongoing authority to review and modify its own decisions where appropriate. The Defence has a legitimate need for the protected material, which may be relevant to Witness OQ’s credibility. 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 order.¹
3. Upon receipt of the written undertaking described above, the Chamber authorizes the Registry to transmit the closed session transcripts of Witness EB’s testimony, and any exhibits filed under seal therewith, to the Defence for Nsengiyumva in *Bagosora et al.*

FOR THE ABOVE REASONS, THE CHAMBER

DECIDES that the transcripts of the closed session trial testimony of Witness EB in *Nahimana et al.*, and exhibits filed under seal therewith, shall be made available to the Defence for Nsengiyumva in the case of *Bagosora et al.* which will file a written undertaking

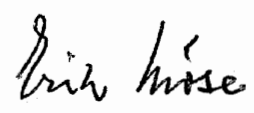
¹ *Nahimana et al.*, Decision on Joseph Nzirorera’s Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 5 June 2003; *Niyitegeka*, Decision on the Defence Motion for Release of Closed Session Transcript of Witness KJ (TC), 23 June 2003; *Kajelijeli*, Decision on Joseph 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.

with the Registry, on behalf of itself and the Accused Nsengiyumva, 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 otherwise to continue to enforce the terms of the witness protection orders of 23 November 1999 and 2 July 2001.

Arusha, 6 May 2004



Erik Møse
Judge

[Seal of the Tribunal]

