



International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
18-05-2004
(20131-20129)

20131
S. Muna

TRIAL CHAMBER I

Before: Judge Erik Møse

Registrar: Adama Dieng

Date: 18 May 2004

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. : ICTR-98-41-T

JUDICIAL RECORD
2004 MAY 18 13 06
S. Muna

DECISION ON RELEASE OF EXHIBITS UNDER SEAL FOR USE IN THE TRIAL
OF *BIZIMUNGU ET AL.*

The Prosecution – *Bizimungu et al.*

Paul Ng'arua
Ibukunolu Babajide

The Prosecution – *Bagosora et al.*

Barbara Mulvaney
Drew White
Segun Jegede
Christine Graham
Rashid Rashid

The Defence – *Bizimungu et al.*

Michelelyne C. St. Laurent
Howard Morrison
Pierre Gaudreau
Tom Moran

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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 Prosecution "Motion for an Order to Disclose Exhibits Received Under Seal for Prosecution Witness Sagahutu Isaie Murashi to the Defence", filed on 17 May 2004;

HEREBY DECIDES the motion.

1. The Prosecution in the case of *Prosecutor v. Bizimungu et al.*, being heard before Trial Chamber II, requests disclosure of exhibits tendered into evidence under seal in the trial of *Prosecutor v. Bagosora et al.* as part of the testimony of a witness who is also expected to testify in the *Bizimungu* case. This disclosure is sought to permit the Prosecution in the *Bizimungu* case to fulfil its obligations under Rule 66(A)(ii) to disclose prior statements of its witnesses to the Defence.

2. At the beginning of the witness's testimony, the Prosecution indicated that the witness had waived the application of protective measures, and his personal information sheet was therefore not placed under seal.¹ During the witness's cross-examination, the Defence for Nsengiyumva tendered prior written statements of the witness, designated as ON-1, ON-2, and ON-3, as Exhibits DNS-42, DNS-43, and DNS-44, respectively. The Presiding Judge did not order that these three exhibits be admitted under seal. The transcripts are, therefore, in error in indicating that these three exhibits were entered under seal.²

3. DNS-41 is a document that may identify other persons who are protected witnesses. Accordingly, that exhibit is properly under seal. 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.³ The Prosecution may disclose Exhibit DNS-41 to 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 *Bagosora* witness protection decision of 29 November 2001.⁴

¹ T. 27 April 2004 p. 57; Exhibit P-215.

² T. 28 April 2004 p. 85.

³ *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 Nzirotera for Disclosure of Closed Session Testimony of Witness ZF (TC), 11 November 2003; *Nahimana et al.*, Decision on Joseph Nzirotera'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 Nzirotera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal (TC), 7 October 2003.

⁴ The Defence teams have been provided with a copy of the witness protection decision of 29 November 2001 as an annex to a prior decision: *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.

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FOR THE ABOVE REASONS, THE CHAMBER

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DECLARES that DNS-41 may be disclosed 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 decision of 29 November 2001;

ORDERS the Registry to delete comments in the transcript to the effect that Exhibits DNS-42, DNS-43, and DNS-44 were entered under seal.

Arusha, 18 May 2004

Erik Møse

Erik Møse
Judge

[Seal of the Tribunal]

