



ICTR-98-42-T
27-05-2004
(8699-8697)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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TRIAL CHAMBER II

2004 MAY 27 P 12:1
OR: ENG
ICTR
JUDICIAL RECORDS ARCHIVES

Before: Judge William H. Sekule, Presiding
Judge Arlette Ramaroson
Judge Solomy Balungi Bossa

Registrar: Mr. Adama Dieng

Date: 27 May 2004

The PROSECUTOR

v.

Pauline NYIRAMASUHUKO *et al.*

Case No. ICTR-98-42-T

**DECISION ON ALOYS SIMBA'S MOTION FOR DISCLOSURE OF CLOSED
SESSION TRANSCRIPTS AND UNREDACTED STATEMENTS OF WITNESS FAI
IN THE NYIRAMASUHUKO ET AL. TRIAL**

Office of the Prosecutor

William T. Edge
Sulaiman Khan
Ignacio Tredici
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Defence Counsel

Sadikou Ayo Alao
Beth Lyons

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (the "Tribunal"),

SITTING, Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramarosan and Solomy Balungi Bossa, (the "Chamber");

BEING SEIZED of "*Requête en extrême urgence de la Défense aux fins d'obtenir du Greffe la communication des déclarations de l'accusation dans l'affaire ICTR-96-8-T*", filed on 11 May 2004;

CONSIDERING the Prosecution's response to "*Requête en extrême urgence de la Défense aux fins d'obtenir du Greffe la communication des déclarations de l'accusation dans l'affaire ICTR-96-8-T*", filed on 17 May 2004;

CONSIDERING that the Defence for Aloys Simba, an Accused in the *Prosecutor v. Simba* case (the "*Simba*" trial), requests disclosure of the following documents from the *Prosecutor v. Ndayambaje et al.* trial (the "*Butare*" trial): Witness FAI's unredacted statements to Prosecution investigators; and the closed session trial transcripts for 31 October 2002, 4, 5, and 6 November 2002;

CONSIDERING FURTHER that the Defence submits that the disclosure is relevant to the credibility of Witness FAI, who is scheduled to testify as Witness YC in the *Simba* trial;

CONSIDERING that the Prosecution does not object to the Motion, and seeks only an order reiterating that the use of the transcripts is subject to strict compliance with the protective measures applicable, thus confirming that the Witness FAI in the *Butare* trial is Witness YC in the *Simba* trial;

NOTING Rule 75 (C), as amended on 14 May 2004, stating that: "The Victims and Witnesses Section shall ensure that the witness has been informed before giving evidence by the party calling that witness that his testimony and his identity may be disclosed at a later date in another case, pursuant to Rule 75 (F)."

CONSIDERING Rule 75 (F) to be inapplicable to this Motion as Witness FAI may not have been informed of the disclosure, as required by Rule 75 (C), prior to Witness FAI's testimony before the Chamber.

RECALLING its Decisions for the protection of Prosecution witnesses (the "Witness Protection Decisions")¹;

RECALLING FURTHER the Tribunal's jurisprudence², in particular the Chamber's 7 October 2003 "Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session

¹ *Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-T, "Decision on the Prosecutor's Motion for the Protection of Victims and Witnesses", 6 March 1997 (for Kanyabashi); *Prosecutor v. Ndayambaje*, Case No. ICTR-96-8-T, "Decision on the Motion Filed by the Prosecutor for the Protection of Victims and Witnesses", 11 March 1997 (for Ndayambaje); *Prosecutor v. Nsabimana et al.*, Case No. ICTR-97-29-T, "Decision on the Prosecutor's Motion for Protective Measures for Victims and Witnesses", 21 May 1999 (for Nsabimana and Nteziyayo); and *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-97-21-T, "Decision on the Prosecutor's Motion for Protective measures for Victims and Witnesses", 27 March 2001 (for Nyiramasuhuko and Ntahobali).

² See *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, "Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal", 5 June 2003; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, "Decision on Motion By Nzirorera for Disclosure of Closed Session Testimony

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Testimony and Exhibits Received under Seal,³ in *Prosecutor v. Kajelijeli*, granting Nzirorera's disclosure request subject to compliance with the Chamber's 6 July 2000 Decision ordering witness protection⁴;

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 69 and 75;

NOW DECIDES the Motion solely on the basis of the written brief filed by the Parties pursuant to Rule 73(A) of the Rules.

FOR THE ABOVE REASONS,

THE TRIAL CHAMBER

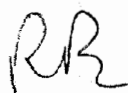
GRANTS the Defence request and instructs the Defence for Aloys Simba that it is under strict orders to comply with the Chamber's Witness Protection Decisions in the *Butare* case; and

ORDERS the Registry to disclose to the Defence for Aloys Simba Witness FAI's unredacted statements to Prosecution investigators; and closed session trial transcripts relating to Witness FAI's testimony, for 31 October 2002, and 4, 5, and 6 November 2002 in the *Butare* trial while reminding the Defence to preserve the confidentiality of the said testimony under all circumstances and in compliance with the Chamber's Witness Protection Decisions in the *Butare* trial.

Arusha, 27 May 2004



William H. Sekule
Presiding Judge



Arlette Ramaroson
Judge




Solomy Balungi Bossa
Judge

of Witness ZF", 11 November 2003; *Prosecutor v. Ntakirutimana*, Case No. ICTR-96-10-T, "Decision on Release of Closed Session Transcript of Witness OO for Use in the Trial of *Bagosora et al.*", 16 February 2004; *Prosecutor v. Musema*, Case No. ICTR-96-13-T, "Decision on Release of Closed Session Transcript of Witness AB for Use in the Trial of *Bagosora et al.*", 16 February 2004; *Prosecutor v. Niyitegeka*, Case No. ICTR-96-14-T, "Decision on Release of Closed Session Transcript of Witness KJ for Use in the Trial of *Bagosora et al.*", 17 February 2004; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, "Decision on Release of Closed Session Transcript of Witness DY for Use in the Trial of *Bizimungu et al.*", 23 February 2004.

³ *Prosecutor v. Kajelijeli*, Case No. ICTR-99-44A-T, "Decision on Joseph Nzirorera's Motion for Disclosure of Closed Session Testimony and Exhibits Received Under Seal", 7 October 2003.

⁴ *Prosecutor v. Kajelijeli*, Case No. ICTR-99-44A-T, "Decision on the Prosecutor's Motion for Protective Measures for Witnesses", 6 July 2000.