



ICTR-98-42-T
23-09-2004
10893-10891
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

10893
Mwanja

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr. Adama Dieng

Date: 23 September 2004

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The PROSECUTOR v. Elie NDAYAMBAJE
The PROSECUTOR v. Joseph KANYABASHI
The PROSECUTOR v. Pauline NYIRAMASUHUKO & Arsène Shalom NTAHOBALI
The PROSECUTOR v. Sylvain NSABIMANA & Alphonse NTEZIRYAYO
(Joint Case No. ICTR-98-42-T)

**DECISION ON THE PROSECUTOR'S EX PARTE AND EXTREMELY URGENT
MOTION FOR LEAVE TO ACCESS CLOSED SESSION TRANSCRIPTS IN CASE
NO. ICTR-96-3-A FOR DISCLOSURE IN CASE NO. ICTR-98-42-T**

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

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

BEING SEIZED of the "Prosecutor's Ex Parte Extremely Urgent Motion for Leave to Access Closed Session Transcripts in Case No. ICTR-96-3-A for Disclosure in Case No. ICTR-98-42-T," filed on 22 September 2004;

CONSIDERING that the Prosecution in the case of *Prosecutor v. Nyiramasuhuko et al.* (the "Butare" trial) requests the Chamber to grant the disclosure by it of the closed session transcripts of Professor Gichaoua given on 28 February 2003, in the *Rutaganda* matter (Case No. ICTR-96-3-A) so that it may fulfil its disclosure obligations under Rule 66(A)(ii) in the *Butare* trial;

CONSIDERING FURTHER the Prosecution submission that it had requested a copy of the above-mentioned transcripts but had been informed by the Registrar's Office that it could not obtain the said transcripts for purposes of the intended disclosure;

CONSIDERING that the Prosecution then made a request to the Appeals Chamber which had ordered the closed session testimony of Professor Gichaoua, and by a Decision of 3 September 2004,¹ the Appeals Chamber ruled that it was no longer seized of the *Rutaganda* matter and that the request should be addressed to the "Trial Chamber seized of the case of *Prosecutor v. Nyiramasuhuko et al.*";

CONSIDERING the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules"), in particular Rules 66, 69 and 75 of the Rules;

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

HAVING DELIBERATED

RECALLING the jurisprudence of the Tribunal on requests for the disclosure of closed session testimonies;²

WHEREAS the Chamber notes that in the instant case the Prosecution prays to be allowed to disclose the closed session transcripts of the testimony of Professor Gichaoua as given on 28 February 2003 before the Appeals Chamber in the *Rutaganda* appeal so that it can fulfil its disclosure obligations in the *Butare* trial;

¹ *Prosecutor v. Nyiramasuhuko et al.* Decision on Prosecution's Request for Leave to Disclose Sealed Transcripts from the Case Prosecutor v. George Rutaganda, Case No. ICTR-96-3-A, (AC) 3 September 2004

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 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.;

WHEREAS the Chamber finds that since the Prosecution does not intend to rescind, vary or augment the protective measures ordered in the first proceedings, it need not make an application to the Chamber under Rule 75(G);

WHEREAS after a careful reading of Rule 75(F)(ii) the Prosecution is obliged to fulfil its disclosure obligations in the present case provided that the Prosecution notifies the Defence to whom disclosure is being made of the nature of the protective measures ordered in the *Rutaganda* appeals proceedings;

WHEREAS the Chamber notes that in an earlier Decision³ it had made the application of Rule 75(F) conditional upon the provisions of Rule 75(C), it therefore agrees with the reasoning of Trial Chamber I in its Decision in the *Nahimana et. al.* case to the effect that no such conditionality is required,⁴ and finds that the provisions of Rule 75(F) are indeed intended to create a mechanism for the routine disclosure of protected information, including closed session testimony, without the need for Parties to make fresh applications to the Chambers to enable such disclosure;

WHEREAS the Chamber notes the Prosecution submissions that it had requested the Registry to provide it with a copy of the closed session transcript of 28 February 2003 in the *Rutaganda* matter so that it may fulfil its disclosure obligations and that its request was denied;

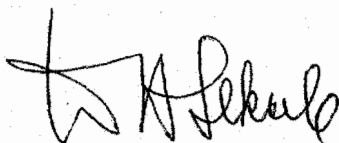
WHEREAS the Chamber finds that in order to enable the Prosecution, in the present case, to fulfil its disclosure obligations, the Registry is required to furnish the needed transcripts to the Prosecution;

ACCORDINGLY the Chamber directs the Registry to furnish the needed transcripts to the Prosecution to enable it fulfil its disclosure obligations under the Rules.

FOR THE ABOVE REASONS, THE TRIBUNAL

DIRECTS the Registry to furnish the needed transcripts to the Prosecution to enable it fulfil its disclosure obligations under the Rules.


Arusha, 23 September 2004



William H. Sekule
Presiding Judge



Arlette Ramarason
Judge



Solomy Balungi Bossa
Judge



³ *Prosecutor v. Nyiramasuhuko et. al.* Decision on the Prosecutor's Request for an order of Closed session Transcripts and sealed Prosecution Exhibits, Case No. ICTR-98-42-T, (TC), 27 May 2004

⁴ *Prosecutor v. Nahimana et. al.* Decision on Disclosure of Transcripts and exhibits of Witness X, Case No. ICTR-99-52-T, (TC) 3 June 2004 paras. 4 and 5