



UNITED NATIONS
NATIONS UNIES

ICTR-99-50-T
02-02-05
(20241-20239)

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

20241
Mushup

OR: ENG

TRIAL CHAMBER II

Before: Judge Khalida Rachid Khan, Presiding
Judge Lee Gacuiga Muthoga,
Judge Emile Francis Short

Registrar: Mr Adama Dieng

Date: 2 February 2005

JUDICIAL RECORDS/ARCHIVES
ICTR

2005 FEB -2 A 10: 38

THE PROSECUTOR
v.
CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

Case No. ICTR-99-50-T

**DECISION ON THE PROSECUTOR'S REQUEST FOR AN ORDER OF
DISCLOSURE OF CLOSED SESSION TRANSCRIPTS AND SEALED
PROSECUTION EXHIBITS PURSUANT TO RULES 69 AND 75 OF THE RULES OF
PROCEDURE AND EVIDENCE**

Office of the Prosecutor:

Mr Paul Ng'arua
Mr Ibukunolu Babajide
Mr Justus Bwonwonga
Mr Elvis Bazawule
Mr George William Mugwanya
Mr Shyamlal Rajapaksa

Counsel for the Defence:

Ms Michelyne C. St. Laurent and Ms Alexandra Marcil for **Casimir Bizimungu**
Mr Ben Gumpert for **Justin Mugenzi**
Mr Pierre Gaudreau and Mr Michel Croteau for **Jérôme-Clément Bicamumpaka**
Mr Tom Moran for **Prosper Mugiraneza**

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

SITTING as Trial Chamber II, composed of Judge Khalida Rachid Khan, Presiding, Judge Lee Gacuiga Muthoga and Judge Emile Francis Short, (the “Chamber”);

BEING SEIZED of the “Prosecutor’s Request For An Order Of Disclosure Of Closed Session Transcripts And Sealed Prosecution Exhibits Pursuant To Rules 69 And 75 Of The Rules Of Procedure And Evidence”, filed on 10 December 2004 (the “Motion”);

RECALLING the “Decision on the Prosecutor’s Motion for Protective Measures for Witnesses”, dated 22 September 2000 (the “Decision of 22 September 2000”);

CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), particularly Rules 69 and 75 of the Rules;

NOW DECIDES the matter solely on the basis of the Prosecutor’s written brief pursuant to Rule 73(A) of the Rules.

PROSECUTOR’S SUBMISSIONS

1. Pursuant to Rules 68 of the Rules, the Prosecutor is requesting the Chamber to amend the Decision of 22 September 2000, in order to disclose the sealed portion of the testimony of Witness D who testified in the case of *The Prosecutor v. Bizimungu et al.* (ICTR-99-50-T) to Defence Counsel in *The Prosecutor v. Muvunyi* (ICTR-2000-55A) where the said witness is scheduled to testify for the Prosecution.

2. The amendment to the Witness Protection Orders is being requested to facilitate the process of disclosure and the appearance of the witness before Trial Chamber I. The Prosecution also submits that the disclosure of the said documents is necessary to facilitate the preparation of the Defence case and assess witness credibility.

3. The Prosecutor also requests that parties or persons accessing these documents should provide a written undertaking to comply with the Protection orders issued in respect of this Witness.

Deliberations

4. Rule 75(F) reads as follows:

(F) Once protective measures have been ordered in respect of a victim or witness in any proceedings before the Tribunal (the “first proceedings”), such protective measures:

- (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal (the “second proceedings”) unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule; but
- (ii) shall not prevent the Prosecutor from discharging any disclosure obligation under the Rules in the second proceedings, provided that the Prosecutor



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notifies the Defence to whom the disclosure is being made of the nature of the protective measures ordered in the first proceedings.

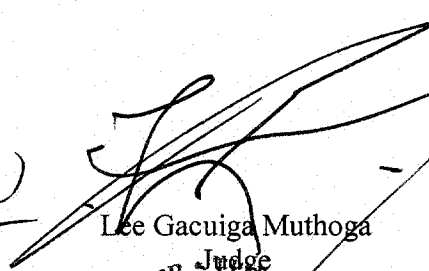
5. Given the terms set out in Rule 75(F)(ii), particularly the reference to “any disclosure obligation under the Rules,” the Chamber is of the view that the Prosecution should fulfil its disclosure obligations under the Rules notwithstanding applicable protective orders, and that upon such disclosure, the party receiving the materials is then bound *mutatis mutandis* by the terms of the applicable protective measures in accordance with the provisions of Rule 75(F).
6. The Chamber recalls that according to the jurisprudence of the Tribunal,¹ Rule 75(F) is intended to create a mechanism for the routine disclosure of closed session testimony without the need for Parties to make individual applications to the Trial Chamber which ordered the protective measures.
7. The Chamber therefore finds that the obligation to make disclosures under Rule 75(F) is automatic, and that the instant application is unnecessary.

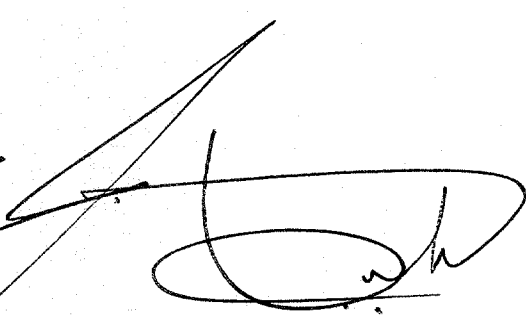
FOR THE FOREGOING REASONS, THE CHAMBER

DISMISSES the Prosecutor’s Motion

Arusha, 2 February 2005


Khalida Rachid Khan
Presiding Judge


Lee Gacuiga Muthoga
Judge


Emile Francis Short
Judge



¹ *Prosecutor v. Nahimana et al.* Case No. ICTR-99-52-T “Decision on Disclosure of Transcripts and exhibits of Witness X,” (TC) 3 June 2004 paras. 4 and 5; *Prosecutor v. Nyiramasuhuko et al.* Case No. ICTR-98-42-T, “Decision on the Prosecutor’s ex-parte and Extremely Urgent Motion to Access Closed Session Transcripts in Case No. ICTR-96-3-A to Disclose to Case No. ICTR-98-42-T” (TC) of 23 September 2004