



ICTR-98-42-T
(23-08-2005)
(11458-11455)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

11458
Mwaf

OR: ENG

TRIAL CHAMBER II

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

Registrar: Mr Adama Dieng

Date: 23 August 2005

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The PROSECUTOR

v.

Pauline NYIRAMASUHUKO and Arsène Shalom NTAHOBALI

Joint Case No. ICTR-98-42-T

DECISION ON THE PROSECUTOR'S EXTREMELY CONFIDENTIAL MOTION – UNDER SEAL – IN RESPONSE TO THE MOTION OF ARSENE SHALOM NTAHOBALI ON THE DISCLOSURE OF THE IDENTITY AND WILL SAY STATEMENTS OF WITNESSES

Office of the Prosecutor

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Mr Pierre Boulé, Mr Claude Desrochers

Defence Counsel for Kanyabashi

Mr Michel Marchand, Ms Simone Santerre

Defence Counsel for Nyiramasuhuko

Ms Nicole Bergevin, Mr Guy Poupart

Defence Counsel for Ntahobali

Mr Normand Marquis

Defence Counsel for Nsabimana

Ms Josette Kadji, Mr Charles Patie Tchakounte

Defence Counsel for Nteziryayo

Mr Titinga Frédéric Pacere, Mr Richard Parras

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

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

BEING SEISED of “Prosecutor’s Extremely Confidential Motion – Under Seal – In Response to the Motion of Arsène Shalom Ntahobali on the Disclosure of the Identity and Will Say Statements of Witnesses” (the “Motion”), filed on 4 August 2005;

CONSIDERING the “Réplique consolidée de Shalom Ntahobali aux réponses de Joseph Kanyabashi et du Procureur à la requête de Arsène Shalom Ntahobali demandant de modifier sa liste ainsi que l’ordre des témoins de sa défense et à la requête et notification de Arsène Ntahobali de son intention de verser au dossier les déclarations écrites de témoins et les transcriptions de leur témoignage dans un procès au TPIR en lieu et place de leur témoignage” (the “Response”), filed on 10 August 2005;

FURTHER CONSIDERING the Pre-Defence Brief for the Defence for Ntahobali filed on 31 December 2004 and the “Will-Say et fiches d’identification des 10 premiers témoins de la défense de Ntahobali”, filed on both 2 and 10 August 2005;

NOTING the Chamber’s Decision of 27 March 2001;

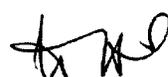
CONSIDERING the Statute of the Tribunal (the “Statute”) and the Rules of Procedure and Evidence (the “Rules”), specifically Rule 75 of the Rules;

HEREBY DECIDES the Motion.

SUBMISSIONS OF THE PARTIES

The Prosecutor

1. The Prosecutor moves that the Chamber order Ntahobali to withdraw the will-say statements of witnesses H1B14, H1B15, WUNJN, and WUNHF filed on 2 August 2005, and replace them with statements which only identify Prosecution Witnesses by their pseudonyms. In addition, the Prosecutor requests the Chamber to order the Registrar to retrieve all copies of the above offending will-say statements and take remedial action to prevent access to them, including putting them under seal.
2. The Prosecutor submits that the will-say statements disclosed by the Defence for Ntahobali for the following Witnesses, HIB14, HIB15, WUNJN and WUNHF, disclose confidential information about the named Prosecution Witnesses. The Prosecutor contends that anyone with access to the initial Pre-Defence brief of Ntahobali containing the pseudonyms of the Prosecution witnesses and the will-say statements of HIB14, HIB15, WUNJN and WUNHF would be able to establish a link between the pseudonyms and the names disclosed in these will-say statements.
3. The Prosecutor emphasises the particular vulnerability of one or more of the Prosecution Witnesses and stresses the necessity to continue to their identities before, during and after their given testimonies. This is to protect the security of the Witness and the integrity of the proceedings.
4. The Prosecutor maintains that the revelation of these identities violates the Protection Orders issued by the Chamber in its Decision of 27 March 2001.



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Ntahobali's Response

5. The Defence for Ntahobali submits that it failed to notice the link between its initial Pre-Defence Brief filed on 31 December 2004 and the will-say statements of the above-mentioned witnesses filed on 2 August 2005. However, the Defence for Ntahobali submits that these offending will-say statements were filed "strictly confidential - under seal", guaranteeing the confidentiality of the information contained therein.
6. The Defence does not object to the Prosecutor's move to withdraw the will-say statements of Witnesses H1B14, H1B15, WUNJN and WUNHF and submits it will file new will-say statements for the first 10 witnesses it intends to call, having redacted the identifying information.

DELIBERATIONS

7. The Chamber recalls its Decision of 27 March 2001 in which it granted protective measures pursuant to Rule 75. In this Decision, after evaluating the security situation affecting the concerned witnesses, the Chamber found that there existed exceptional circumstances to warrant non-disclosure orders based on the fears expressed by these witnesses that justified the issuance of protective measures.¹
8. The Chamber stated, *inter alia*,:

"...[...]...that the Prosecutor designate a pseudonym for each prosecution witness, which will be used whenever referring to each such witness in Tribunal proceedings, communications and discussions between the parties to the trial, and the public.²
9. The Chamber finds that in the present case, the will-say statements of Defence witnesses HIB14, HIB15, WUNJN and WUNHF disclose information which enables the identification of the named Prosecutor witnesses.
10. The Chamber notes the Defence for Ntahobali's argument that the will-say statements were filed "strictly confidential – under seal." The Chamber also observes that the Defence has accepted its mistake and is willing to withdraw the will say statements of Witnesses H1B14, H1B15, WUNJN and WUNHF and file new will say statements having redacted the identifying information.
11. Nevertheless, the Chamber further notes that although the damage and prejudice caused by this particular disclosure may be rectified by recalling the offending will-say statements, the Chamber underscores the importance of non-disclosure of protected witnesses' identifying information. The whole purpose of pseudonyms is to avoid disclosure of identities where such a fear has been expressed and the Chamber has seen fit to protect those witnesses.
12. For these reasons, identifying information of protected witnesses for all Parties is a serious matter and should be handled with extreme caution and only divulged in circumstances approved by the Chamber. It is imperative that all Parties adhere to these rules and remain continuously alert and alive to this issue.

¹ *Ibid.*, paras. 18, 20.

² Decision of 27 March 2001, paras. 21.



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FOR THESE REASONS, THE TRIBUNAL:

GRANTS the Motion;

REITERATES the Chamber's Orders in the Decision of 27 March 2001, namely, that the pseudonym for each Prosecution Witness be used whenever referring to that Witness in Tribunal proceedings, communications and discussions between the Parties to the trial, and the public;

ORDERS the Defence of Ntahobali to file the 10 redacted will-say statements by 24 August 2005;

REQUESTS that the Registrar to make all endeavours to retrieve any outstanding copies of the will-say statements of witnesses H1B14, H1B15, WUNJN and WUNHF; and,

DIRECTS that all Parties continue to treat all Witnesses' identifying information with extreme caution.

Arusha, 23 August 2005



William Sekule
Presiding Judge


Arlette Ramadon
Judge

[Seal of the Tribunal]

Solomy Balungi Bossa
Judge