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UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-00-55A-T
23-03-2007

(4221-4219)

OR: ENG

TRIAL CHAMBER II

Before: Judge Asoka de Silva, Presiding
sitting as a single Judge pursuant to Rule 75(II) of the Rules

Registrar: Mr Adama Dieng

Date: 23 March 2007

THE PROSECUTOR

v.

Tharcisse MUVUNYI

Case No. ICTR-00-55

JUDICIAL RECORDS ARCHIVE
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**DECISION ON EXTREMELY URGENT MOTION FROM THE ACCUSED
ALPHONSE NTEZIRYAYO TO DISCLOSE CLOSED SESSION TRANSCRIPTS
FOR WITNESS M078**

Office of the Prosecutor (*Nyiramasuhuko et. al*):

Silvana Arbia
Adelaide Whest
Holo Makwala
Althea Alexis
Astou Mbow, Case Manager

Counsel for Alphonse Nteziryayo:

Titinga F. Pacere
Guy Larue

INTRODUCTION

1. Alphonse Nteziryayo is an Accused in the *Nyiramasuhuko et. al* case and requests disclosure of the closed session transcript of Witness AND-41 who testified in the *Muvunyi* case as as Witness M078, on 16 February 2007. This extremely urgent Motion stems from an order given by the Trial Chamber in *Nyiramasuhuko et. al.* for the Defence to disclose the confidential material to the parties in that case as soon as possible.

DELIBERATIONS

Jurisdiction

2. The Defence asserts that this Motion should be presented before the Appeals Chamber which is currently seized of the file in the *Muvunyi* case. Witness M078 was a protected defence witness in *Muvunyi* and some of his testimony was ordered to be taken in closed session as a measure to protect the witness' identity. Rule 75 (G) (i) provides that if a party to a second proceeding wishes to rescind, vary or augment protective measures ordered in the first proceeding, it must apply "to any Chamber, however constituted, remaining seized of the first proceedings."

3. As stated in the *Nahimana et. al.* case, during the time that an appeal is pending against a trial judgement, "the trial chamber before which the trial was conducted remains seized of all matters not related to the appeal, including requests to modify witness protection orders."¹ Additionally, Rule 75(H)(i) allows such a request to be made before a Judge and not necessarily the entire Trial Chamber. As such, the application is properly before the present Chamber.

Merits

4. This Chamber agrees with the standard for disclosure expressed in the *Nahimana et. al.* case:

"Confidential *inter partes* material from one case may be disclosed to a party in another case, where the applicant demonstrates that the material sought 'is likely to assist that applicant's case materially, or at least that there is a good chance that it would.' This standard can be met by showing that there is

¹ *Prosecution v. Nahimana et al.*, Case No. 99-52-T, Decision on Nsengiyumva Request for Access to Protected Material (TC) ("*Nahimana Decision*"), 16 July 2006, para. 3.



a factual nexus between the two cases, for example, if the cases stem from events alleged to have occurred in the same geographical area at the same time.”²

5. The Defence asserts that Witness AND-41 testified in the *Muvunyi* case about the same meeting that was discussed in his testimony in the *Nyiramasuhuko et. al.* case. Consequently, the Chamber finds that there is a sufficient factual nexus between the two testimonies warranting disclosure of the requested confidential material.

THE CHAMBER THEREFORE

GRANTS the Defence Motion;

REQUESTS the Registrar to make immediate disclosure of the closed session transcripts of Witness M078 dated 16 February 2006, in the case of *The Prosecutor v. Muvunyi*, to all of the parties in the *Nyiramasuhuko et. al.* case.

Arusha, 23 March 2007, done in English.


Asoka de Silva
Presiding Judge

[Seal of the Tribunal]



² *Nahimana* Decision para. 4, citing: *Prosecutor v. Galic*, Decision on Momcilo Perisic's Motion Seeking Access to Confidential Material in the Galic Case (AC), 16 February 2006, para. 3 (citations omitted); *Prosecutor v. Blagojevic and Jokic*, Decision on Momcilo Perisic's Motion Seeking Access to Confidential Material in the Blagojevic and Jokic Case (AC), 18 January 2006, para. 4; *Rugosora*, Decision on Nzirorera Request for Access to Protected Material, 19 May 2006, para. 2.



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Case Name:	The Prosecutor vs. Tharcisse MUVUNYI		Case Number: ICTR-00-55	
Dates:	Transmitted: 23 March 2007		Document's date: 23 March 2007	
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