



169R-01-76-T
06-07-2007
(3658-3656)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

3658
S. Simba

TRIAL CHAMBER I

Before: Judge Erik Mose
Registrar: Adama Dieng
Date: 6 July 2007

THE PROSECUTOR

v.

Aloys SIMBA

Case No. ICTR-01-76-T

2007 JUL -6 P 2:02
JUDICIAL RECORDS ARCHIVES
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**DECISION ON PROSPER MUGIRANEZA'S MOTION
FOR ACCESS TO TRANSCRIPTS**

The Prosecution

Hassan Bubacar Jallow
Richard Karegyesa
Ignacio Tredici
Didace Nyirinkwaya

The Defence for Aloys Simba

Sadikou Ayo Alao
Beth Lyons

The Defence for Prosper Mugiraneza

Tom Moran
Marie-Pierre Poulain

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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Judge Erik Mose pursuant to Rule 73 (A) of the Tribunal's Rules of Procedure and Evidence (the "Rules");

BEING SEIZED OF Prosper Mugiraneza's "Motion for Access to Transcripts of Testimony", filed on 20 June 2007;

CONSIDERING the Prosecution response, filed on 21 June 2006,

HEREBY DECIDES the motion.

INTRODUCTION

1. The Mugiraneza Defence seeks access to the entirety of Witness FPK-2's testimony in the *Simba* case. The Defence potentially seeks to call Witness FPK-2 as a Defence witness in the *Mugiraneza* case and believes that access to the transcripts of his testimony will allow the Defence to make that determination.¹
2. The Prosecution asks the Chamber to stay proceedings pending the filing of the necessary evidence in support of Defence's motion, namely an explanation of the factual nexus between the two cases. It states that it has no objection to the relief sought but that the Defence has not satisfied the conditions to establish that it is entitled to the entirety of transcripts for Witness FPK-2.²
3. The Defence did not file a reply or provide any additional information concerning its request.

DELIBERATIONS

1. According to Rule 78, all proceedings before the Tribunal, other than deliberations of the Trial Chamber, shall be held in public unless otherwise provided. The purpose of this rule is to make the proceedings accessible to the public. The Mugiraneza Defence is entitled to access to the open session transcripts of Witness FPK-2's testimony as any other member of the public.
2. Pursuant to Rule 79, testimony given in closed session is not generally available to the public. In deciding whether to grant access to confidential material to an accused in another case, the Appeals Chamber has held:

[A]n accused in a case before the International Tribunal may be granted access to confidential material in another case if he shows a legitimate forensic purpose for such access. With respect to *inter partes* confidential material, it is sufficient for an applicant to demonstrate that "the material sought is likely to assist the applicant's case materially or at least that there is a good chance that it would". This standard can be met "by showing the existence of a nexus between the applicant's case and the case from which such material is

¹ Motion, para. 2.

² Response, paras. 3-6.

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sought, for example, if the cases stem from events alleged to have occurred in the same geographical area at the same time".³

3. In the Chamber's view, the Mugiraneza Defence has not satisfied the requisite criteria. It is not sufficient that the Defence considers Witness FPK-2 to be a potential witness. Rather, the Defence must set forth a specific foundation for its request for access to the information. Consequently, the Chamber must deny the Defence's motion insofar as the closed session transcripts of this witness.

4. If the information contained in the open session transcripts of Witness FPK-2 assists the Defence in articulating a "legitimate forensic purpose" for seeking access to the closed session transcripts, it may renew its request before the Chamber.⁴

FOR THE ABOVE REASONS, THE CHAMBER

DENIES the Mugiraneza Defence request for closed session transcripts of Witness FPK-2.

Arusha, 6 July 2007



Erik Mose
Judge

[Seal of the Tribunal]



³ *Blagojević and Jokić*, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Blagojević and Jokić Case (AC), 18 January 2006, para. 4; *Prosecutor v. Galić*, Decision on Momčilo Perišić's Motion Seeking Access to Confidential Material in the Galić Case (AC), 16 February 2006, para. 3. See also *Bagosora et al.*, Decision on Nzirorera Request for Access to Protected Material (TC), 19 May 2006, para. 2.

⁴ According to the Prosecution, it has provided the Defence with the open session transcripts for Witness FPK-2. See Response, para. 2 n. 3.