



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

ICTR-98-41-T
12-09-2007
(39223-39220)

39223

S. MUSA

ORIGINAL: ENGLISH

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding
Judge Jai Ram Reddy
Judge Sergei Alekseevich Egorov

Registrar: Adama Dieng

Date: 12 September 2007

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S. MUSA

THE PROSECUTOR

v.

Théoneste BAGOSORA

Gratien KABILIGI

Aloys NTABAKUZE

Anatole NSENGIYUMVA

Case No. ICTR-98-41-T

**DECISION ON KANYABASHI DEFENCE REQUEST
FOR DISCLOSURE OF CLOSED SESSION TESTIMONY**

The Prosecution
Barbara Mulvaney
Drew White
Christine Graham
Rashid Rashid
Gregory Townsend

The Defence for Bagosora et al.
Raphaël Constant
Allison Turner
Paul Skolnik
Frédéric Hivon
Peter Erlinder
André Tremblay
Kennedy Ogetto
Gershom Otachi Bw'Ormanwa

The Defence for Kanyabashi
Michel Marchand
Simone Santerre

6/11

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Jai Ram Reddy, and Judge Sergei Alekseevich Egorov;

BEING SEIZED OF the "Requête urgente de Joseph Kanyabashi aux fins de divulgation d'extraits placés sous scellés du témoignage de l'expert Filip Reyntjens", filed by the Kanyabashi Defence on 4 September 2007;

CONSIDERING the Prosecution Response to the Defence Motion, filed on 6 September 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. The Defence of Joseph Kanyabashi, who is currently being tried in the *Nyiramasuhuko et al.* case before Trial Chamber II, requests the disclosure of confidential and sealed extracts pertaining to the testimony of Prosecution Expert Witness Filip Reyntjens given on 16 September 2004 in the *Bagosora et al.* trial. Mr. Reyntjens will soon testify for the Kanyabashi Defence.

2. The Defence argues that its request is justified because the sealed extracts pertain to the assassination of Félicien Gatabazi, a subject covered in Mr. Reyntjens's expert report submitted by the Kanyabashi Defence. The disclosure of the sealed extracts would allow it to better prepare for the testimony of the expert witness, and would allow the other parties to prepare their cross-examinations as well.¹

3. The Prosecution takes no position on the motion, but submits that the Kanyabashi Defence should obtain Mr. Reyntjens's consent for disclosure of the sealed extracts of his testimony of 16 September 2004.²

DELIBERATIONS

4. Rule 75 (G) permits any party to a proceeding seeking to vary protective measures ordered in a different proceeding to apply to the Chamber "seised of the first proceeding." As Trial Chamber I remains seized of the *Bagosora et al.* case, the Kanyabashi Defence has properly applied to this Chamber.

5. Confidential *inter partes* material from one case may be disclosed to a party in another case, where there is a legitimate forensic purpose for such access.³ It is sufficient

¹ Motion, paras. 11-12.

² Response, para. 5.

³ *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.

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to show such a purpose if the applicant demonstrates that disclosure "is likely to assist that applicant's case materially, or at least that there is a good chance that it would".⁴

6. The extracts at issue were placed under seal because Mr. Reyntjens accidentally disclosed in open court session the name of one of his sources, having promised the person in question confidentiality. The name was elicited by the Bagosora Defence based on a document disclosed by the Prosecution.⁵ The Kanyabashi Defence has now notified the Chamber that it has obtained the consent of Mr. Reyntjens to disclose the sealed extracts from his testimony of 16 September 2004.⁶

7. Given that the extracts relate to an issue that Mr. Reyntjens has described in his expert report to the Kanyabashi Defence, the Chamber finds that access to the confidential material requested would materially assist the Kanyabashi Defence. Further, disclosure to each of the co-Accused in the *Nyiramasuhuko et al.* case of the confidential material requested will also enhance trial fairness, since any person within the Office of the Prosecution may be designated to have access to protected information in any case before this Tribunal.⁷

8. The Chamber finds, therefore, that the Accused Kanyabashi and all of the co-Accused in *Nyiramasuhuko et al.* should be allowed access to the sealed extracts from the testimony of Mr. Reyntjens given on 16 September 2004 in the *Bagosora et al.* trial, subject to the further guidance below.⁸

9. Pursuant to Rule 75 (F), protective measures ordered by the Chamber in any "first proceedings" (the *Bagosora et al.* case) 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". The six Defence teams in *Nyiramasuhuko et al.* shall therefore be bound by the Chamber's order of confidentiality in the *Bagosora et al.* case.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the motion;

ORDERS the Registry to provide to the Accused Kanyabashi and his Defence team, as well as his co-Accused Elie Ndayambaje, Sylvain Nsabimana, Arsène Shalom Ntahobali,

⁴ *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; *Prosecutor v. Bagosora et al.*, Decision on Nzirorera Request for Access to Protected Material (TC), 19 May 2006, para. 2.

⁵ *Prosecutor v. Bagosora et al.*, T. 17 September 2004 pp. 2-3.

⁶ Email from Kanyabashi Defence counsel to the Chamber of 10 September 2007, in which Mr. Reyntjens notes "Je confirme par la présente que je n'ai aucune objection à ce que les passages en huis clos de mon témoignage dans l'affaire Bagosora soient divulgués".

⁷ *Bagosora et al.*, Decision on Interlocutory Appeals of Decisions on Witness Protection Orders (AC), 6 October 2005, paras. 44-46.

⁸ The extracts are at T. 16 September 2004 pp. 60 and 62.

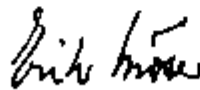
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Alphonse Nteziryayo, and Pauline Nyiramasuhuko and their Defence teams, with the sealed excerpts from the testimony of Filip Reyntjens given on 16 September 2004 in the *Bagosora et al.* case, extracted from pages 60 and 62 of the transcript, in electronic format where possible;

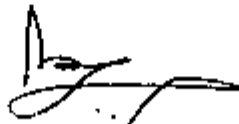
ORDERS the *Nyiramasuhuko et al.* Defence teams to keep confidential to themselves the extracts in question, and to refrain from disclosing them to third parties without the express authorization of the Chamber; and

ORDERS that, save for the disclosure required by this Decision, the confidential material provided by the Registry shall remain subject to the protective measures previously imposed by the Chamber.

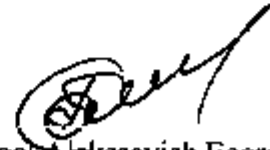
Arusha, 12 September 2007



Erik Mose
Presiding Judge



Jai Ram Reddy
Judge



Sergei Alekseevich Egorov
Judge

[Seal of the Tribunal]

