



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

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OR: ENG

TRIAL CHAMBER II

Before Judges: Khalida Rachid Khan, presiding
Lee Gacuiga Muthoga
Emile Francis Short

ICTR-99-50-T
22-September 2008
(28342 - 28339)

Registrar: Mr. Adama Dieng

Date: 22 September 2008

THE PROSECUTOR

v.

CASIMIR BIZIMUNGU
JUSTIN MUGENZI
JÉRÔME-CLÉMENT BICAMUMPAKA
PROSPER MUGIRANEZA

22 Sept 2008 11:07
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Case No. ICTR-99-50-T

DECISION ON GENERAL AUGUSTIN BIZIMUNGU'S MOTION FOR DISCLOSURE
OF CLOSED SESSION MATERIAL OF DEFENCE WITNESS WZ4

Rules 68 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor:

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Mr. Elvis Bazawule

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Ms. Michelyne C. St. Laurent and Ms. Andrea Valdivia for Casimir Bizimungu
Mr. Ben Gumpert and Mr. Jonathan Kirk for Justin Mugenzi
Mr. Michel Croteau and Mr. Philippe Larochelle for Jérôme-Clément Bicamumpaka
Mr. Tom Moran and Ms. Cynthia Cline for Prosper Mugiraneza

Felicite A. TAYON
22 Sept 2008

INTRODUCTION

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1. The Defence for General Augustin Bizimungu, an accused in the case of *Ndindilyimana et al.*, moves this Trial Chamber to order the Registrar to disclose to it closed session transcripts and exhibits admitted under seal in respect of protected Defence Witness WZ4, who testified in the *Casimir Bizimungu et al* trial in September 2007.¹ The Witness testified concerning events which took place at the *Centre Hôpitalier de Kigali* ("CHK"), amongst other things, during the relevant period. He also testified that he was present at the CHK on 7 April 1994.

2. The Prosecution does not oppose the Motion.²

DISCUSSION

The Law on Disclosure of Confidential Materials

3. Rule 75 of the Rules empowers a Chamber to order appropriate measures to safeguard the privacy and security of witnesses, provided that the measures are consistent with the rights of the accused. Furthermore, Rule 79 (A)(ii) permits the Chamber to order that the proceedings be held in closed session (in absence of the press and the public) in order to preserve any protective measures granted under Rule 75. Pursuant to these powers, this Chamber extended a number of protective measures to the witnesses in this case, including to Defence Witness WZ4.

4. Sub-Rules 75 (F) and (G) of the Rules envisage the circumstances currently before this Chamber. First, those sub-Rules provide that the witness protection orders in place for Witness WZ4 ("the first proceedings") continue to have effect in Augustin Bizimungu's case ("the second proceedings").³ Second, they prescribe a method by which Augustin Bizimungu may apply to this Chamber to rescind, vary, or augment those protective measures, enabling him to have access to the materials sought.⁴ Furthermore, Rule 75 (F)(ii) creates a mechanism for the routine disclosure, by the Prosecution, of closed session testimony without the need for the Parties to make individualised applications to the Trial Chamber who granted a protective order, in circumstances where that material falls within the Prosecution's disclosure obligations.⁵

¹ *Prosecutor v. Casimir Bizimungu et al.* Case No. ICTR-99-50-T "General Augustin Bizimungu's Motion to Disclose Closed Session Material of Defence Witness WZ4", filed on 30 June 2008 ("Motion"). The Motion is brought pursuant to Rule 75 (G) of the Rules of Procedure and Evidence ("Rules"). For the testimony of Defence Witness WZ4, see *Bizimungu et al.*, T. 5, 6 and 7 September 2007. General Augustin Bizimungu is an accused person in the case of *Prosecutor v. Ndindilyimana et al.* Case No. ICTR-00-56-1 ("*Ndindilyimana et al.*").

² *Bizimungu et al.*, "Prosecutor's Response to General Augustin Bizimungu's Motion to disclose closed session material of Defence Witness WZ4" filed on 2 July 2008 ("Response"), para. 2

³ See Rule 75 (F).

⁴ See Rule 75 (G).

⁵ Rule 68 of the Rules sets out the Prosecutor's disclosure obligations with regard to exculpatory and other relevant material. Sub-Rule (A) requires the Prosecutor to disclose "any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution



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5. According to the established jurisprudence of the Tribunal, under Rule 75, a party seeking access to confidential material from another case must "show a legitimate forensic purpose for seeking access, he must show that such access would be likely to assist his case materially or that there is at least a good chance that it will give that assistance".⁶ In addition, such access will be granted only when the requested material has been sufficiently identified.⁷ 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 sought, for example, if the cases stem from events alleged to have occurred in the same geographical area at the same time".⁸

Should the Materials be Disclosed to the Defence for General Bizimungu?

6. Defence Witness WZ4 testified on behalf of Augustin Bizimungu's co-Accused, Nzuwonemeye, in June 2008, about events which took place at the CHK. He also testified before the *Casimir Bizimungu et al.* Chamber about these events. Prosecution allegations against Augustin Bizimungu include those transpiring from events which allegedly took place at CHK.⁹ A nexus therefore exists between Augustin Bizimungu's case and that of *Casimir Bizimungu et al.*, with particular reference to the events which allegedly occurred at CHK.

7. Although the Defence for Augustin Bizimungu closed its case on 14 December 2007, the *Ndindiliyimana* trial is ongoing. The closed session testimony of Defence Witness WZ4 in the *Casimir Bizimungu et al.* case, and the sealed exhibits associated with his testimony, may assist Augustin Bizimungu in defending allegations against him concerning alleged events at the CHK. The Chamber notes that the Prosecution does not oppose the Defence Motion, and that the Defence agrees to be bound by the protective measures already extended to Defence Witness WZ4.

8. Considering all of these matters, the Chamber finds that granting this request strikes an appropriate balance between the rights of the accused and those of Defence Witness WZ4, as required by Articles 19 and 20 of the Statute.

FOR THESE REASONS, the Chamber

GRANTS the Defence Motion in its entirety; and hereby


evidence." Pursuant to Sub-Rule (E), the Prosecutor's disclosure obligations under Sub-Rule (A) are ongoing, notwithstanding the completion of the trial and any subsequent appeal.

⁶ *Hadzihasanovic et al.*, Decision on Motion by Mario Cerkez for Access to Confidential Supporting Material, 10 October 2001 (TC), para. 11 ("*Hadzihasanovic* decision of 10 October 2001"). See also *Bagosora et al.*, Decision on Nzirorera Request for Access to Protected Material (TC), 19 May 2006, para. 2.

⁷ *Hadzihasanovic* decision of 10 October 2001, para. 11 (a party seeking access to confidential material from another case must "identify as clearly as possible the documents or the nature of the documents to which he seeks access."); *Bagosora et al.*, Decision on Bizimungu Defence Request for Disclosure of Closed Session Testimony and Exhibits Placed Under Seal (TC), 15 May 2007, paras. 7-8 (granting a motion for access to specific confidential material from the *Military I* case, filed by an accused in another case).

⁸ *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.

⁹ See *Ndindiliyimana et al.*, Indictment, para. 83, for example.

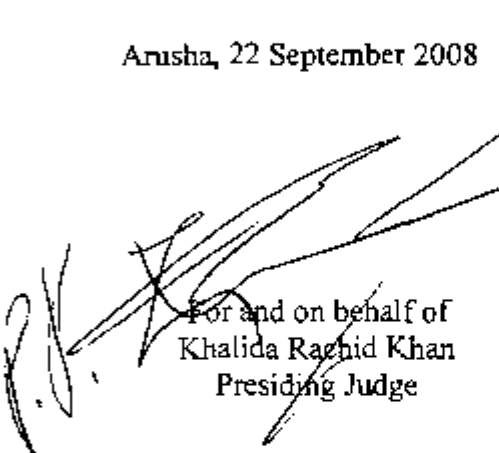


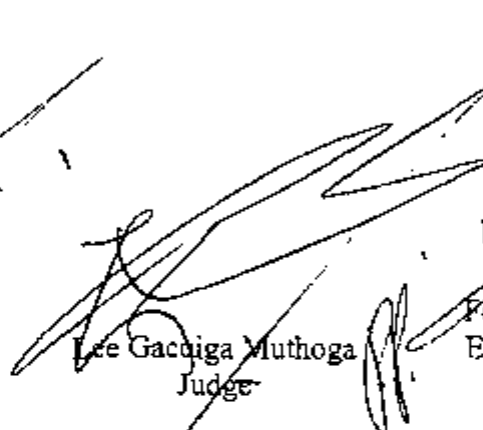
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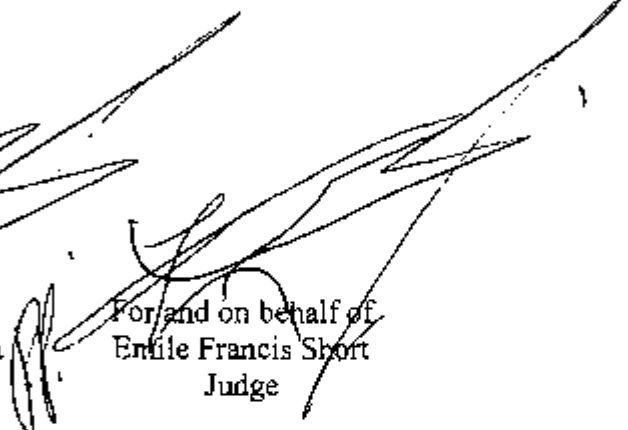
ORDERS the Registry to make available to the Augustin Bizimungu Defence transcripts of all closed session testimony of Defence Witness WZ4, and exhibits admitted under seal during the course of his testimony, who testified before the *Casimir Bizimungu et al.* Chamber on 5, 6 and 7 September 2007; and

REMINDS the Defence for General Augustin Bizimungu that the witness protection orders in place for Defence Witness WZ4 in the *Casimir Bizimungu et al.* case continue to have effect in Augustin Bizimungu's case, as provided for by Rule 75 (F) of the Rules.

Arusha, 22 September 2008


For and on behalf of
Khalida Raehid Khan
Presiding Judge


Lee Gacigira Muthoga
Judge


For and on behalf of
Entile Francis Short
Judge

[Seal of the Tribunal]

