



ICTR-98-42-T  
30-09-08  
(12603-12500)

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

12603  
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OR: ENG

**TRIAL CHAMBER II**

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

Registrar: Mr. Adama Dieng

Date: 30 September 2008

JUDICIAL  
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KANYABASHI ARCHIVES

**The PROSECUTOR v. Joseph KANYABASHI**  
Case No. ICTR-96-15-T

*Joint Case No. ICTR-98-42-T*

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**DECISION ON KANYABASHI'S CONFIDENTIAL MOTION FOR DISCLOSURE  
OF THE TRANSCRIPTS OF WITNESS QA'S STATEMENT BEFORE CANADIAN  
JUDICIAL AUTHORITIES**

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**Office of the Prosecutor**

Ms. Holo Makwaia  
Ms. Adelaide Whest  
Ms. Madeleine Schwarz  
Ms. Althea Alexis Windsor  
Mr. Fergal Gaynor  
Mr. Tidiane Mara  
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**Counsel for Kanyabashi**

Mr. Michel Marchand  
Ms. Alexandra Marcil

**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA** (the "Tribunal"),

**SITTING** as Trial Chamber II composed of Judges William H. Sekule, Presiding, Arlette Ramarosan and Solomy Balungi Bossa (the "Chamber");

**BEING SEIZED** of the "*Requête confidentielle de Joseph Kanyabashi visant à obtenir du greffe la communication aux parties des notes sténographiques du témoin QA,*" filed confidentially on 22 September 2008 (the "Motion");

**CONSIDERING** the "Registrar's Submission pursuant to Rule 33 (B) of the Rules of Procedure and Evidence," filed on 24 September 2008 (the "Registrar's Submission");

**CONSIDERING** the Statute of the Tribunal (the "Statute") and the Rules of Procedure and Evidence (the "Rules");

**NOW DECIDES** the Motion pursuant to Rule 73 on the basis of the written submissions.

**INTRODUCTION**

1. On 24 April 2008, the Chamber ordered the disclosure of Prosecution Witness QA's closed session testimony and exhibit P-93 to Canadian authorities.<sup>1</sup> Prosecution Witness QA was expected to testify as Witness DDM-41 in the trial of Désiré Munyaneza before a Canadian Court, but he did not. Instead, Witness QA was heard by a rogatory commission in Dar es Salaam on 12 May 2008 and transcripts were taken of his statement.

2. On 4 September 2008, the Defence for Kanyabashi filed a motion before the Canadian court for the ICTR to have access to the said transcripts. On 10 September 2008, the Canadian Judicial authorities granted the Defence request,<sup>2</sup> ordered that the transcripts be sent to the Registrar of the ICTR while reminding the Parties about the confidential nature of the document considering that the witness is protected. The said transcripts were handed over to the Registry and have been available to it since 17 September 2008.

**SUBMISSIONS OF THE PARTIES**

***Kanyabashi's Motion***

3. The Defence requests the Chamber to order the Registry to disclose the transcripts of Witness QA's statement to the Canadian authorities to all the Parties in the instant case, taking into account the Witness' protective measures.

***Registry's Submission***

4. The Registry observes that on 15 September 2008, it received from the Canadian Judicial Authorities a certified copy of a Judgement entitled "*Sa Majesté la Reine c. Désiré Munyaneza et Joseph Kanyabashi,*" dated 10 September 2008 with a sealed envelope containing the transcripts of the testimony of Witness DDM-41 (Prosecution Witness QA)

<sup>1</sup> *Prosecutor v. Nyiramasuhuko et al.*, "Decision on the Prosecutor's motion to unseal and disclose to Canadian authorities the transcripts of Witness QA and exhibit P-93," 24 April 2008.

<sup>2</sup> See "*Sa Majesté la Reine c. Désiré Munyaneza et Joseph Kanyabashi,*" 10 September 2008.

before the Canadian Authorities. A copy of the judgement is said to have been received by Ms. Alexandra Marcil, Co-Counsel for Kanyabashi.

5. In its judgement, the Canadian court requests its Registrar to advise the Tribunal of the confidential nature of the testimony of Witness DDM-41, and the Registry has kept the envelope containing the transcripts of Witness DDM-41 sealed.

6. On receipt of the documents on 17 September 2008, the Court Management Section immediately contacted the Defence for Kanyabashi to advise them that the Registry was in receipt of the judgement and the sealed envelope.

### DELIBERATIONS

7. The Chamber notes that there is an order from the Canadian court regarding the transmission of the transcripts of Witness DDM-41 (Prosecution Witness QA) to the ICTR pursuant to a motion filed by Kanyabashi before the Canadian court.

8. The Chamber observes that the Defence for Kanyabashi did not give any reasons for its request for the documents, nor for the request for their disclosure to the other Parties in the current Motion. Nonetheless, since it is not contested that, at the request of the Defence for Kanyabashi, the Canadian court authorised the transcripts of Witness DDM-41 (Prosecution Witness QA) to be transmitted to the ICTR provided the protective measures for the witness are adhered to by the recipients, and that the transcripts are indeed in the Registry's possession, the Chamber orders the Registry to disclose the transcripts of Prosecution Witness QA to the Defence for Kanyabashi only. If the Kanyabashi Defence so wishes, it may disclose the transcripts to the other Parties taking into account the protective measures in place for Witness QA.

9. The Chamber reiterates its Decision so far that Prosecution Witness QA is to be recalled only for cross-examination and re-examination by the Parties exclusively on specific contradictions found in his *Gacaca* record.<sup>3</sup>

### FOR THE ABOVE REASONS, THE TRIBUNAL

**PARTIALLY GRANTS** the Motion;

**ORDERS** the Registry to disclose the sealed transcripts of Prosecution Witness QA in its possession to the Defence for Kanyabashi only;

**ORDERS** that the protective measures for Prosecution Witness QA shall be observed by any party who receives the transcripts;

**DENIES** the Motion in all other respects.

<sup>3</sup> *Prosecutor v. Nyiramasuhuko et al.*, 'Decision on Kanyabashi's motion to re-open his case and to re-call Prosecution Witness QA, 2 July 2008.

Arusha, 30 September 2008



William H. Sekule  
Presiding Judge

Arlette Ramaroson  
Judge

Solomy Balungi Bossa  
Judge

[Seal of the Tribunal]