



ICTR-04-81-T  
09-03-2009  
International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

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Kwanja

(5913 - 5911)

TRIAL CHAMBER I

Before: Judge Erik Møse, presiding  
Judge Sergei Alekseevich Egorov  
Judge Florence Rita Arrey

ICTR-00-56-T  
(28368 - 28366)  
09-03-2009

Registrar: Adama Dieng

Date: 9 March 2009

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-I

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JUDICIAL RECORDS ARCHIVE  
RECEIVED  
*[Signature]*

DECISION ON AUGUSTIN BIZIMUNGU DEFENCE MOTION FOR DISCLOSURE  
OF CLOSED SESSION TESTIMONY AND EXHIBITS

The Prosecution  
Ifeoma Ojemeni-Okali  
Simba Mawere  
Christiana Fomenky

The Defence for Setako  
Lennox Hinds  
Cainnech Lussia-Berdou

The Defence for Bizimungu  
Gilles St-Laurent  
Benoît Henry

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda  
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR MOI  
NAME / NOM: Marianne Ben Salima  
SIGNATURE: [Signature] 09/03/09

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**THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA**

**SITTING** as Trial Chamber I, composed of Judge Erik Møse, presiding, Judge Sergei Alekseevich Egorov, and Judge Florence Rita Arrey;

**BEING SEIZED OF** the Augustin Bizimungu Defence Request for closed session testimony and confidential exhibits of Witness SDA, filed on 23 February 2009;

**HEREBY DECIDES** the motion.

1. Prosecution Witness SDA testified in the trial of Ephrem Setako on 22 and 23 September 2008. According to the Bizimungu Defence, he gave evidence about events that are directly related to the charges against Bizimungu on a factual, geographic and temporal basis. The Bizimungu Defence now requests the closed session transcripts of his testimony in the present trial alleging that it bears on the witness's credibility in the *Ndindiliyimana* case. The Defence agrees to be bound by all of the witness protection measures in place in this case. Neither the Prosecution nor the Setako Defence has made any submissions.

**DELIBERATIONS**

2. Pursuant to Rule 75 (G) of the Rules of Procedure and Evidence, witness protection measures ordered by a Trial Chamber in any "first proceedings" will 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*mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in the Rules. As the *Setako* trial is before Trial Chamber I, the Bizimungu Defence – being a party to "second proceedings" – has properly applied to this Chamber for the relief requested.

3. 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 sought, for example, if the cases stem from events alleged to have occurred in the same geographical area at the same time".<sup>1</sup>

4. Public-session transcripts show that Witness SDA previously testified for the Prosecution in the *Ndindiliyimana et al.* case. Extracts of that testimony were entered as an exhibit in the present trial, in which he testified that he was an eyewitness to a meeting on 7 April 1994 in which Bizimungu is accused of participating.<sup>2</sup>

<sup>1</sup> *Prosecutor v. 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 *Prosecutor v. Ruzahho*, Decision on Bizimungu Request for Closed Session Testimony (TC), 7 June 2007, para. 3; *Prosecutor v. Bagosora et al.*, Decision on Nzirorera Request for Access to Protected Material (TC), 19 May 2006, para. 2.

<sup>2</sup> See Defence Exhibit 65 (extract of transcripts of 8 June 2005 from *Prosecutor v. Ndindiliyimana et al.* trial).

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5. The Chamber finds that the material sought is likely to assist the applicant's case materially, or that there is a good chance that it would. The testimony requested contains multiple references to Bizimungu and his alleged statements during the 7 April meeting, and the witness has already testified in the *Ndindiliyimana et al.* case. In these circumstances, the Chamber is satisfied that the Bizimungu Defence has articulated a legitimate forensic purpose for the material requested and that access to the confidential material would materially assist the Defence.

6. Pursuant to Rule 75 (F), the Bizimungu Defence shall be bound by the Chamber's Prosecution witness protection orders in the present case.<sup>3</sup>

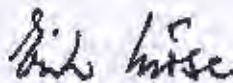
**FOR THE ABOVE REASONS, THE CHAMBER**

**GRANTS** the Defence motion;

**DECLARES** that the Augustin Bizimungu Defence and any persons under its instruction or authorisation shall be bound *mutatis mutatis* by the terms of the Prosecution witness protection orders in the *Setako* case; and

**DIRECTS** the Registry to disclose the closed session transcripts and confidential exhibits for Witness SDA in the present trial to the Augustin Bizimungu Defence.

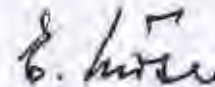
Arusha, 9 March 2009



Erik Mose  
Presiding Judge



Sergei Alekseevich Egorov  
Judge



Florence Rita Arrey  
Judge

[Seal of the Tribunal]



<sup>3</sup> Decision on the Prosecution Motion for Protective Measures (TC), 18 September 2007.