



ICTR-04-81-T
25-03-2009
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

5916
lva

(5916 — 5914)

TRIAL CHAMBER I

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

Registrar: Adama Dieng

Date: 25 March 2009

THE PROSECUTOR

v.

Ephrem SETAKO

Case No. ICTR-04-81-I

JUDICIAL RECORDS/ARCHIVED
2009 MAR 25 P 3-05

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

The Prosecution
Ifema Ojemeni-Okali
Simba Mawere
Christiana Fomenky

The Defence for Setako
Lennox Hinds
Cainnech Lussia-Berdou

The Defence for Bizimungu
Gilles St-Laurent
Benoît Henry

6/2

5915

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 a request from the Defence of Augustin Bizimungu for closed session testimony and confidential exhibits of Witness SAA, filed on 23 February 2009;

HEREBY DECIDES the motion.

1. Prosecution Witness SAA testified in the trial of Ephrem Setako on 25, 26, 27 and 28 August 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 and sealed exhibits of his testimony in the *Setako* trial alleging that they bear 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*mutatis mutandis* in any other proceedings before the Tribunal (the "second proceedings") unless and until they are rescinded, varied or augmented in accordance with the procedure set out in the Rules.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".¹

4. Public-session transcripts in the present trial show that Witness SAA previously testified for the Prosecution in the *Ndindiliyimana et al.* case, and extracts of that testimony were entered as an exhibit.² In the *Setako* trial, Witness SAA testified that Bizimungu

¹ *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. Setako*, Decision on Augustin Bizimungu Defence Motion for Disclosure of Closed Session Testimony and Exhibits (TC), 9 March 2009, para. 3; *Prosecutor v. Renzaho*, 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.

² Setako Defence Exhibit 12 (extract of transcripts of 15 February 2005 from *Prosecutor v. Ndindiliyimana et al.* trial).

6h

5914

participated in a meeting in late 1992 or early 1993 in Mukingo, as well as in a meeting on 7 April at Joseph Nzirorera's mother's house, in the stocking of arms in Ruhehe, and in meetings at Nzirorera's residence. He further testified that Bizimungu was present in Busogo on 8 April 1994. These allegations are related to those in the Indictment against Bizimungu.³

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 participation in events in Mukingo commune and in Ruhengeri prefecture during April 1994, 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.⁴

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 SAA in the present trial to the Augustin Bizimungu Defence.

Arusha, 25 March 2009



Erik Møse
Presiding Judge



Sergei Alekseevich Egorov
Judge



Florence Rita Arrey
p.p. Judge

[Seal of the Tribunal]



³ Bizimungu Indictment of 23 August 2004, paras. 29, 55-56.

⁴ Decision on the Prosecution Motion for Protective Measures (TC), 18 September 2007.