

ICTR-07-91-T  
16-4-2009  
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UNITED NATIONS  
NATIONS UNIES

**International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda**

OR: ENG

**TRIAL CHAMBER III**

**Before Judges:** Khalida Rachid Khan, Presiding  
Lee Gacuiga Muthoga  
Aydin Sefa Akay

**Registrar:** Adama Dieng

**Date:** 16 April 2009

JUDICIAL RECORDS ARCHIVES  
2009 APR 16 1 P 5:50  
16/04/2009

**THE PROSECUTOR**

v.

**Léonidas NSHOGOZA**

**Case No. ICTR-07-91-T**

**DECISION ON THE DEFENCE MOTION TO MAKE PUBLIC THE TRANSCRIPTS  
OF 11 FEBRUARY 2008 AND THE CASE FILE IN GENERAL**

*Rules 78 and 79 of the Rules of Procedure and Evidence*

**Office of the Prosecutor:**

Richard Karegyesa  
Abdoulaye Seye  
Dennis Mabura  
Marie Ka

**For the Accused:**

Allison Turner

### INTRODUCTION

1. On 4 January 2008 the Accused, Léonidas Nshogoza, was charged under Rule 77 of the Rules of Procedure and Evidence (“Rules”) with two counts of contempt of the Tribunal and two counts of attempt to commit contempt of the Tribunal.<sup>1</sup> The Accused voluntarily surrendered to the Tribunal on 8 February 2008 and pleaded not guilty to all charges on 11 February 2008.<sup>2</sup>
2. On 11 February 2008, immediately following his initial appearance, the Confirming Judge held a Status Conference. The Prosecutor requested that the proceedings move into closed session, stating that it wished to discuss “housekeeping matters, some of which may be confidential and [...] that may impact on commencement of trial”.<sup>3</sup> Following the Prosecutor’s initial representations, the Confirming Judge sought reassurance that there were good reasons for closing the session.<sup>4</sup> The Prosecutor submitted that good reasons existed, but claimed that it could not provide further details about these reasons in open session.<sup>5</sup> The Prosecutor also cited Rule 65 *bis* of the Rules, suggesting that he understood this Rule to support the request for a closed session status conference.<sup>6</sup> Relying on these representations, the Confirming Judge agreed to move the proceedings into closed session.
3. On 19 March 2008, the Defence filed a Motion requesting that the confidential status of the transcripts of this closed session status conference be lifted.<sup>7</sup>
4. The Prosecutor did not respond to the Motion.

### DISCUSSION

#### *Request to Make the Transcripts Public*

5. Rule 78 provides that, generally, proceedings before a Trial Chamber should be held in public.<sup>8</sup> Rule 79 (A) lists exceptions to the general rule favouring public proceedings:
  - “(i) Public order or morality;
  - (ii) Safety, security or non-disclosure of the identity of a victim or witness as provided in rule 75; or
  - (iii) The protection of the interests of justice”.
6. The Defence submits that the reasons offered in support of the closed session were not based in law, and, even if they had been, the reason for ordering the closed session no longer

<sup>1</sup> *The Prosecutor v. Nshogoza*, Case No. ICTR-07-91-PT, Indictment, 4 January 2008.  
<sup>2</sup> T. 11 February 2008, p. 6.  
<sup>3</sup> T. 11 February 2008, p. 6.  
<sup>4</sup> T. 11 February 2008, pp. 6 and 7.  
<sup>5</sup> T. 11 February 2008, p. 6.  
<sup>6</sup> T. 11 February 2008, p. 7; Rule 65 *bis* (A) provides that a status conference may be convened by a Trial Chamber or a Judge and its purpose is to organize exchanges between the parties so as to ensure expeditious trial proceedings.  
<sup>7</sup> *Nshogoza*, “Motion to Make Public the Transcript of 11 February 2008 Status Conference and Related Motion for Directive to the Registry to Make the Case Available to the Public, filed 19 March 2008”; “Corrigendum – Defence Motion to Make Public the Transcript of 11 February 2009, filed 26 March 2008” (“Motion”).  
<sup>8</sup> Rule 78 of the Rules states that “[a]ll proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.”

exists. Furthermore, the Defence asserts that the interests of justice require that the status conference be made public.<sup>9</sup>

7. During the Status Conference, the Prosecutor expressed reservations about Defence Counsel representing the Accused due to their prior professional relationship in the *Prosecutor v. Rukundo* case,<sup>10</sup> where Defence Counsel (Ms. Turner) served as Co-Counsel to Mr. Rukundo, and the Accused served as a Defence Investigator.<sup>11</sup> The Chamber notes that the fact of their common assignment to Mr. Rukundo's Defence team is known to the public. Accordingly, this was not a justifiable reason to close the session.

8. Additionally, the Prosecutor stated that at some time during proceedings it may interview Defence Counsel to determine whether she should become a witness.<sup>12</sup> Although this information is related to ongoing investigations, its confidentiality in the present case cannot be said to be in the interests of justice, as both the potential witness, Defence Counsel, and the subject of the investigation, the Accused, remained present during the closed session.

9. The Chamber therefore considers that there was no justifiable reason to move to closed session for the Status Conference of 11 February 2008.

*The Request to Make the Case File Public*

10. The Defence further requested that information about this case be made available to the public, noting that, at the time the Motion was filed, the case had not been listed on the Tribunal's webpage or in the Tribunal's Public Judicial Records Database ("Database"). The Chamber notes that this case is now listed on both the webpage and the Database. The Chamber therefore considers the Defence Request regarding the case file to be moot.

**FOR THESE REASONS**, the Chamber

**GRANTS** the Defence Motion in part; and

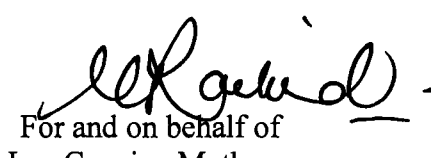
**ORDERS** the Registrar to lift the confidentiality of the Transcript of the Status Conference held on 11 February 2008, and make it public; and,

**DECLARES** the remainder of the Motion to be moot.

Arusha, 16 April 2009



Khalida Rachid Khan  
Presiding Judge



For and on behalf of  
Lee Gacuiga Muthoga  
Judge



Aydin Sefa Akay  
Judge

[Seal of the Tribunal]



<sup>9</sup> Motion, para. 11.

<sup>10</sup> Case No. ICTR-01-70.

<sup>11</sup> T. 11 February 2008, pp. 9-11 (closed session).

<sup>12</sup> T. 11 February 2008, p. 10 (closed session).