

ICTR-98-44-T
23-08-2010
(51823 - 51820)

51823
A



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

OR: ENG

TRIAL CHAMBER III

Before Judges: Dennis C. M. Byron, Presiding
Gberdao Gustave Kam
Vagn Joensen

Registrar: Adama Dieng

Date: 23 August 2010

2010 AUG 23 P 11:31
JUDICIAL SECRETARIAT
ICTR

THE PROSECUTION

v.

**Édouard KAREMERA
Matthieu NGIRUMPATSE**

Case No. ICTR-98-44D-T

**DECISION ON CALLIXTE NZABONIMANA'S MOTION FOR ACCESS TO
EXHIBIT DNZ-461**

Rule 75 of the Rules of Procedure and Evidence

Office of the Prosecution:
Don Webster
Sunkarie Ballah-Conteh
Takeh Sendze
Jean-Baptiste Nsanzimfura
Maria Wilson

Defence Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Defence Counsel for Matthieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

sdg

51822

INTRODUCTION

1. During the recall testimony of Witness BTH the Chamber admitted into evidence as Exhibit DNZ-461 an interview with BTH concerning his allegations of fabrication of evidence in Ruhengeri Prison against accused before the Tribunal ("Exhibit"). The Exhibit was put under seal because it revealed the identity of BTH.¹
2. On 25 May 2009, Callixte Nzabonimana filed a motion requesting the Chamber for unrestricted access to the Exhibit for his defense team and a witness he seeks to call as an expert witness on fabrication of evidence in Ruhengeri Prison.²
3. Counsel for the now late Joseph Nzirorera has proposed that Nzabonimana's request could be met by filing as a public document a version of the Exhibit with the redaction of information identifying BTH.³ The Prosecution supports this proposal.⁴

DELIBERATIONS

The public filing of a redacted version of the Exhibit

4. The Chamber agrees that the allegations that evidence has been fabricated in Ruhengeri Prison against accused before this Tribunal is of interest to other Accused as well as the general public. The Chamber, therefore, grants the proposal that a version of the Exhibit with the redaction of information identifying protected witnesses be filed as a public document.

Unlimited access to the Exhibit for Nzabonimana and his defense team

5. The order which has been issued in the *Karemera et al.* trial for the protection of Witness BTH prohibits that the identity of BTH be disclosed to anyone who is not a party to that trial.⁵ Nzabonimana's request for unlimited access to the Exhibit, therefore, requires a variation of the protection order pursuant to Rule 75(G) of the Rules of Procedure and Evidence.

¹ T. 24 Apr 2008, pp. 39, 40.

² Requête de Callixte Nzabonimana en communication de la Pièce DNZ 461 produite sous scellé lors du témoignage du Témoin du Procureur BTH, filed on 25 May 2010, para. 9.

³ Joseph Nzirorera's Response to Nzabonimana Motion for Access to Exhibit DNZ 461, filed 26 May 2010.

⁴ Prosecutor's Response to Nzabonimana's Motion for Access to Exhibit DNZ-461 Produced Under Seal during the Testimony of Prosecution Witness BTH, filed on 26 May 2010.

⁵

6. When a party to other proceedings requests access to confidential material from another case, such material must be identified or described by its general nature and a "legitimate forensic purpose" for accessing it must be demonstrated.⁶ A case-specific analysis is required in each instance, and a Trial Chamber must be satisfied that the requesting party has established that this material is "likely to assist its case materially, or that there is at least a good chance that it would".⁷ Consideration must also be given to the relevance of the material sought, which may be demonstrated by showing "the existence of a nexus between the requesting party's case and the case from which such material is sought."⁸ Such a factual nexus may be established, for example, if the cases arise from events alleged to have occurred in the same geographic area at the same time, although this may not always be necessary or sufficient.⁹
7. The Chamber considers that Callixte Nzabonimana has properly identified and described the material sought by exhibit number. Moreover, the Chamber finds that Nzabonimana has established a legitimate forensic purpose for accessing the Exhibit. Thus, Nzabonimana has met the threshold to permit the disclosure of the requested materials to himself and his defence team.

Unlimited access to the Exhibit for Nzabonimana's witness

8. A witness, whether called as a factual witness or sought to be called as an expert witness, is not a member of the defence team of the party calling the witness. Further, the purpose of a protection order prohibits information of the identity of a protected witness from being disclosed to another witness unless the information can be considered essential for the evidence of that witness. It is not apparent that the information in the Exhibit of the identity of protected witnesses would be essential for the research to be carried out by Nzabonimana's witnesses. Neither is it apparent that the *Nzabonimana* Trial Chamber may find it relevant with any expertise evidence on witness fabrication in its case, and if so, whether it will consider Nzabonimana's witness an expert on the matter. The Chamber, therefore, denies the request with

⁶ *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-R, Decision on Rutaganda's Appeal Concerning Access to Confidential Materials in the *Karemera et al.* Case (AC), 10 July 2009, para. 28, ("Rutaganda Decision").

⁷ *Ibid.*

⁸ Rutaganda Decision, para. 13.

⁹ *Ibid.*

51820

respect to the witness. The Chamber will reconsider its decision if Nzabonimana provides further justification for the request and the consent of the *Nzabonimana* Trial Chamber that unrestricted access to the Exhibit for the witness be sought.

FOR THE ABOVE NOTED REASONS, THE CHAMBER

- I. GRANTS** Nzabonimana's motion in part;
- II. REQUESTS** the Registry to file a version of Exhibit DNZ-461 with redaction of information identifying protected witnesses as a public document;
- III. REQUESTS** the Registry to disclose Exhibit DNZ-461 to Callixte Nzabonimana for confidential use for himself and his defence; and
- IV. DENIES** Nzabonimana's request that he be allowed to show the unredacted Exhibit to a witness.

Arusha, 23 August 2010, done in English.


Gberdao Gustave Kam
Judge


Dennis C. M. Byron
Presiding Judge


Vagn Joensen
Judge

