



UNITED NATIONS  
NATIONS UNIES

ICTR-00-55A-A  
31-03-2011  
(208/A-206/A)

Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

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IN THE APPEALS CHAMBER

**Before:** Judge Patrick Robinson, Presiding  
**Registrar:** Mr. Adama Dieng  
**Decision of:** 31 March 2011

THARCISSE MUVUNYI

v.

THE PROSECUTOR

*Case No. ICTR-2000-55A-A*

2011 MAR 31 10 3: 58  
JUDICIAL RECORDS ARCHIVES  
REGISTRAR  
*[Signature]*

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**DECISION ON ILDEPHONSE NIZEYIMANA'S REQUEST FOR ACCESS TO  
CLOSED SESSION TRANSCRIPTS**

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**Counsel for Tharcisse Muvunyi:**

Mr. William E. Taylor III

**The Office of the Prosecutor:**

Mr. Hassan Bubacar Jallow  
Mr. Drew White  
Ms. Kirsten Gray  
Ms. Yasmin Chubin  
Ms. Zahida Virani

**Counsel for Ildephonse Nizeyimana:**

Mr. John Philpot  
Mr. Cainnech Lussiaà-Berdou

1. I, **Patrick Robinson**, Presiding Judge of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 (“Tribunal”) and the Presiding Judge in this case, am seized of a motion filed confidentially on 24 March 2011 by Mr. Ildephonse Nizeyimana (“Nizeyimana”) for access to closed session transcripts of a witness from the *Muvunyi* case.<sup>1</sup> Neither the Prosecution nor Tharcisse Muvunyi (“Muvunyi”) filed a response.<sup>2</sup>

2. In February 2006, Defence Witness M039 testified partially in closed session as a protected witness in the *Muvunyi* case.<sup>3</sup> Nizeyimana is currently on trial before the Tribunal for allegations related to events at Cyahinda parish.<sup>4</sup> Nizeyimana anticipates calling Witness M039 as a defence witness in his trial related to these allegations.<sup>5</sup> Accordingly, Nizeyimana seeks access to the closed session transcripts of Witness M039 in order to finalize the decision on whether to call him as a witness.<sup>6</sup> Furthermore, Nizeyimana consents to be bound by the witness protection order in the *Muvunyi* case with respect to this material.<sup>7</sup>

3. Where protective measures have been ordered in any proceedings before the Tribunal, they continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal, unless and until they are rescinded, varied, or augmented.<sup>8</sup> A party is entitled to seek material from any source, including another case before the Tribunal, to assist in the preparation of its case.<sup>9</sup> Where a party requests access to confidential material from another case, such material must be identified or described by its general nature and a legitimate forensic purpose must be demonstrated.<sup>10</sup> Consideration must 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.<sup>11</sup> Further, the requesting party must establish that this material is likely to assist

<sup>1</sup> Nizeyimana Defence Motion for Disclosure of Closed Session Transcripts, 24 March 2011 (“Motion”).

<sup>2</sup> On 24 March 2011, I ordered that the response to the Motion be filed by 28 March 2011. Order for the Filing of Submissions, 28 March 2011.

<sup>3</sup> Motion, paras. 1, 2, 7. See also *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Tharcisse Muvunyi’s Motion for Protection of Defence Witnesses, 20 October 2005 (“*Muvunyi* Witness Protection Order”).

<sup>4</sup> Motion, para. 5.

<sup>5</sup> Motion, paras. 8, 9.

<sup>6</sup> Motion, para. 11.

<sup>7</sup> Motion, para. 11.

<sup>8</sup> Rule 75(F)(i) of the Rules of Procedure and Evidence of the Tribunal.

<sup>9</sup> *Protais Zigiranyirazo v. The Prosecutor*, Case No. ICTR-01-73-A, Decision on Michel Bagaragaza’s Motion for Access to Confidential Material, 14 May 2009, para. 7 (“*Zigiranyirazo* Decision”).

<sup>10</sup> *Zigiranyirazo* Decision, para. 7.

<sup>11</sup> *Zigiranyirazo* Decision, para. 7.

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its case materially, or that there is at least a good chance that it would.<sup>12</sup> Once it is determined that confidential material filed in another case may materially assist an applicant, the Chamber shall determine which protective measures shall apply to the material, as it is within the Chamber's discretionary power to strike the balance between the rights of a party to have access to material to prepare its case and guaranteeing the protection and integrity of confidential information.<sup>13</sup>

4. Nizeyimana has identified the confidential material that he seeks, namely the closed session transcripts of Witness M039's testimony. Nizeyimana has also demonstrated a nexus between certain aspects of his case and parts of the *Muvunyi* case. In particular, Nizeyimana seeks to call a witness from the *Muvunyi* case to testify on similar factual matters.<sup>14</sup> The need to assess whether to call Witness M039 as a Defence witness in the *Nizeyimana* case is a legitimate forensic purpose which is likely to assist his case materially.<sup>15</sup>

5. For the foregoing reasons, I hereby:

**GRANT** the Motion;

**ORDER** the Registry to disclose the closed session transcripts of Witness M039's testimony in the *Muvunyi* case to Nizeyimana as soon as practicable;

**ORDER** Nizeyimana and his Defence team to maintain the confidentiality of the closed session material, consistent with the *Muvunyi* Witness Protection Decision.

Done in English and French, the English version being authoritative.

Done this 31st day of March 2011,  
At Arusha, Tanzania.

Judge Patrick Robinson  
Presiding



<sup>12</sup> *Zigiranyirazo* Decision, para. 7.

<sup>13</sup> *Zigiranyirazo* Decision, para. 7.

<sup>14</sup> Motion, para. 8.

<sup>15</sup> See, e.g., *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, Decision on Interlocutory Appeal Relating to Disclosure under Rule 66(B) of the Tribunal's Rules of Procedure and Evidence, 25 September 2006, para. 9 ("There are few tasks more relevant to the preparation of the defence case than selecting witnesses.").